IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) Nos. 1316 to 1322 of 2008

Commissioner of Income Tax – III
Coimbatore.
... Appellant in all the appeals

vs.

M/s.Vijayeswari Textiles Limited
1088, Avanashi Road,
Coimbatore – 641 037.
...Respondent in all the appeals

These Tax Case Appeals are filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Chennai "D" Bench, dated 14.06.2005 in ITA Nos.74,75,76,77,78,79,80/Mds/2002, for the assessment years 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, respectively.

For Appellant : Mr.Vijaykumar Punna for
Mr. T.R.Senthil Kumar (in all cases)

For Respondent : Mr.R.Venkatanarayan for
Mr.Subbaraya Iyer Padmanbhan
(in all cases)

COMMON JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

These appeals by the assessee, filed under Section 260A of the Income Tax Act, 1961, are directed against the common order passed by the Income-Tax Appellate Tribunal, Chennai “D” Bench, dated 14.06.2005 in ITA Nos.74,75,76,77,78,79,80/Mds/2002, for the assessment years 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, respectively.

2.These Appeals have been admitted, vide order dated 10.09.2008, on the following Substantial Question of Law:

> *“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that expenditure on replacement of old machinery by purchase and installation of new machinery was allowable as revenue expenditure??”*

3.We have heard Mr.Vijaykumar Punna for Mr. T.R.Senthil Kumar, the learned counsel for the appellant and Mr.R.Venkatanarayan for Mr.Subbaraya Iyer Padmanbhan, the learned counsel for the respondent.

4.Though the tax effect in each of the appeals is lesser than the threshold limit prescribed in Circular No.3 of 2008, dated 11.07.2018, issued by the Central Board of Direct Taxes, we have ventured to hear the parties on the merits of the matter, since it is pointed out by the learned counsel for the Revenue that the assessments were reopened under Section 147 of the Income Tax Act, 1961 ('the Act' for brevity) and he does not have clear instructions as to whether there was an audit objection prior to the re-opening of the assessments.

5.The short question which falls for consideration is as to whether the expenditure incurred by the assessee on replacement of old machinery by purchase and installation of new machinery, replacement of spares of textile machinery be allowable as a Revenue expenditure. The law has been settled by the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Madurai & others Vs. Saravana Spinning Mills Pvt. Ltd., in [2007(293)ITR201(SC)]** wherein the Hon'ble Supreme Court has held as follows:

> "*13.On behalf of the assessee, reliance was placed on the judgement of this Court in the case of CIT v. Mahalakshmi Textile Mills Ltd., MANU/SC/0142/1967: reported in [1967]66ITR710(SC). In that case, the assessee carried on the business of manufacture and sale of cotton yarn. In the previous year relevant to*

assessment year 1956-57, the assessee spent Rs.93,000/- aprox. For introduction of "Casablanca Conversion System" in its plant. The I.T.O disallowed the claim of the assssee. The Appellate Authority agreed with I.T.O. Before the Tribunal, the assessee contended that the amount expended for introducing Casablanca Conversion System was current expenditure under Section 10(2)(v) of the Indian Tax Act, 1922 (Section 31(i) of the 1961 Act). The Tribunal inspected the spinning factory of the assessee. It studied the working of the machinery with the Casablanca Conversion System. It also studied the literature published by the manufacturer of Casablanca Conversion System. After a detailed study, the Tribunal held that on account of the stress and strain of production over a long period there was a need for change and that the assessee had replaced old parts by introducing the said system. Accordingly, the Tribunal treated the expenditure incurred for introducing the Casablanca Conversion System as allowance under Section 10(2)(v) of the Indian Income Tax Act, 1922. The High Court accepted the findings recorded by the Tribunal saying that by the introduction of Casablanca Conversion System no new machinery or plant was installed, but the introduction of the system amounted to fitting of improved version and the expenditure in that behalf was of revenue nature. The High Court observed that certain parts of the machinery had worn-out, they needed replacement, and when it was found *that the old type of replacement parts were not available in the market, the assessee had to introduce the Casablanca Conversion System. This finding was accepted by this Court in the above judgement. In our view, the said judgement has no application with the facts of the present case. At the outset, we may state that replacement generally may not fall under the expression "current repairs" but, in certain cases, where the old parts were not available in the market or where the old parts had worked for 50 to 60 years, replacement can, in such cases of exception, fall within the expression of "current repairs". In Mahalakshmi Textile Mills case (supra) the finding recorded by the Tribunal and the high Court was that old type of replacement parts were not available in the market and, therefore, the expenditure came within the expression "current repairs". That is not the case before us, hence, the said judgement has no application to the facts of the present case. Moreover, the judgement of this Court in Mahalakshmi Textile Mills (supra) has not defined the word "asset" to mean the entire production system in the textile mill. In the said judgement, it is nowhere stated that the entire textile mill is one single asset and that it represents one single integrated process."*

6.The decision in the case of Saravana Spinning Mills Private Limited (supra) was relied on by the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Madurai Vs. Mangayarkarasi Mills (P) Ltd., [2009(315)ITR114(SC)],** wherein it was held as follows:

> *"14.The first issue that needs to be resolved is whether each machine in a textile mill is an independent item or merely a part of a complete spinning mill, which only together are capable of manufacture, and there is no intermediate marketable product produced. In our view, this issue has been satisfactorily answered by the recent decision of tis Court in CIT v. Saravana Spinning Mills (P) Ltd., MANU/SC/3308/2007. In that case this Court has held unambiguously that each machine in a segment of a textile mill has an independent role to play in the mill and the output of each division is different from the other. "Dealing wit a ring frame in a textile mill, this Court has held that it is an "Independent and separate" machine. Further, it is accepted that each machine in a textile mill is part of the integrated process of manufacture of yarn and is integrally connected to the other machines in the mill for production of the final product. However, this interconnection does not take away the independent identity an distinct function of each machine. Thus, each machine in a textile mill should be treated independently as such and not as a mere part of an entire composite machinery of the spinning mill. As stated above, it can at best be considered part of an integrated manufacture process employed in a textile*

mill."

7.A Division Bench of this Court, in the case of **Super Spinning Mills Ltd., Vs. Assistant Commissioner of Income Tax [2013 (357) ITR 0720 (Mad)]** considered an identical Substantial Question of Law, as framed in these appeals and after taking note of the decision of the Hon'ble Supreme Court in **Saravana Spinning Mills Pvt. Ltd., and Mangayarkarasi Mills (P) Ltd.,** remanded the matter to the Commissioner of Income Tax (Appeals) to decide the issue as to whether the expenditure, in effect, could be treated as revenue expenditure.

8.In the light of the legal position as enunciated by the Hon'ble Supreme Court in **Saravana Spinning Mills Pvt. Ltd., and Mangayarkarasi Mills (P) Limited,** we are of the considered view that the matter has to be remanded for fresh consideration. Though in the case of **Super Spinning Mills Ltd.,** the Division Bench thought fit to remand the matter to CIT(A), we are of the considered view that the matter should be remanded to the Assessing Officer, since the assessee company is under liquidation and there has also been a change of name.

9.In the light of the above, the appeals filed by the Revenue are allowed and the orders passed by the Tribunal, the Commissioner of Income Tax (Appeals) as well as the assessment orders are set aside and the matter is remanded to the Assessing Officer for fresh consideration, who shall afford an opportunity to the assessee or the liquidator, who is incharge of liquidation proceedings, to state their case in a proper perspective and decide on the issue as to whether the expenditure, in effect, could be treated as Revenue expenditure. Accordingly, the Substantial Question of Law is left open and the appeals stand allowed to the extent indicated above. No costs.

(T.S.S.J.) **(V.B.S.J.)**

30.10.2018

msk/mrm

Index:Yes/No

To

Income-Tax Appellate Tribunal, Chennai "D" Bench

T.S.Sivagnanam, J.

and

V.Bhavani Subbaroyan, J.

msk/mrm

T.C. (Appeal) Nos. 1316 to 1322 of 2008

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