IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

Coram :
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISHKUMAR

Tax Case Appeal No.260 of 2009

The Commissioner of Income Tax, Coimbatore. ...Appellant

Vs

Prabhu Spinning Mills (P) Ltd., Tirupur ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 30.11.2007 in ITA No.2902/Mds/2005 for the assessment year 2002-03 against the order of commissioner Income Tax(Appeals)-II made in ITA 76-C/05-06 dated 14.10.2005 in PAN AABCPO750E passed by the Assistant Commissioner of Income Tax Circle-I, Tiruppur dated 23.03.2005.

For Appellant : Mr.T.R.Senthil Kumar
For Respondent: Mr.R.Sivaraman

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 is directed against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 30.11.2007 in ITA No.2902/Mds/2005 for the assessment year 2002-03.

2. The above appeal has been admitted on 24.4.2009 on the following substantial question of law :

> "Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the claim of modernization/expenditure incurred amounting to Rs.2,58,21,005/- is allowable as revenue expenditure?"

3. Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the Revenue and Mr.R.Sivaraman, learned counsel for the assessee.

4. 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 CIT, Madurai & others Vs. Saravana Spinning Mills Pvt. Ltd. [reported in (2007) 293 ITR 201] wherein it has been 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] 66 ITR 710 (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/- approx. 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."

5. The decision in the case of Saravana Spinning Mills Private Limited was relied on by the Hon'ble Supreme Court in the case of CIT, Madurai Vs. Mangayarkarasi Mills (P) Ltd. [reported in (2009) 315 ITR 114] wherein it has been 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."

6. A Division Bench of this Court in the case of Super Spinning Mills Ltd. Vs. ACIT [reported in (2013) 357 ITR 0720] considered an identical substantial question of law as framed in this appeal and after taking note of the decisions of the Hon'ble Supreme Court in the case of Saravana Spinning Mills Pvt. Ltd., and Mangayarkarasi Mills (P) Ltd., remanded the matter to the Commissioner of Income Tax (Appeals) [for short, the CIT (A)] to decide the issue as to whether the expenditure, in effect, could be treated as revenue expenditure.

7. 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 the CIT(A), we are of the considered view that the matter should be remanded to the Assessing Officer.

8. In the light of the above, the appeal filed by the Revenue is allowed and the orders passed by both the Tribunal as well as the CIT (A) and the assessment order are set aside and the matter is remanded to the Assessing Officer for a fresh consideration, who shall afford an opportunity to the assessee to state their case in a proper perspective and decide the issue as to whether the expenditure, in effect, could be treated as revenue expenditure.

9. Accordingly, the substantial question of law is left open and the appeal stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal Madras 'D' Bench
2. The Commissioner of Income Tax (Appeals)-II, Coimbatore.
3. The Assistant Commissioner of Income Tax, Circle-I, Tiruppur.

+1CC To Mr.T.R.Senthil Kumar, Advocate SR.No.79385
+1CC To Mr.R.Siva Raman, Advocate SR.No.79625.

T.C.A.No.260 of 2009

RGN(CO)
KAK(12/12/2018)