

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.210 and 211 of 2018
and

C.M.P.Nos.3371 and 3372 of 2018

Commissioner of Income Tax,
Trichy. ... Appellant in all appeals

Vs

The Lakshmi Vilas Bank Ltd.,
Salem Road Kathaparai,
Karur. ... Respondent in all appeals

Tax Case Appeals filed u/s.260-A of the Income Tax Act, 1961, against the orders of Income Tax Appellate Tribunal Madras 'A' Bench, dated 29.01.2016 in ITA No.1366/Mds/2014 and ITA No.1735/Mds/2014 for the Assessment Years 2001-02 and 2000-01 against the order of commissioner of Income Tax (Appeals) Tiruchirapalli made in ITA Nos.463/10-11, 387/07-08 and 283/11-12 CIT(A)/TRY,DT.29.01.2014 and 28/02/2014, respectively against the order of the Additional commissioner of Income Tax Range -I, Tiruchirapalli and Assistant commissioner of Income Tax, Company Circle I, Tiruchirapalli order dt.15.12.2010 and 31.12.2007 respectively made in PAN GIR.NO.AAA CT 4291P.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.Vijayaraghavan
for M/s.Subbaraya Aiyar
Padmanabhan & Ramamani

COMMON JUDGMENT

[Judgment of the Court was made by T.S.SIVAGNANAM, J]

These appeals, by the Revenue, are directed against the common order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 29.01.2016 in ITA No.1366/Mds/2014 for the Assessment Year 2001-02 and 2000-01.

2. The following substantial question of law has been framed in both the appeals:

'Whether on the facts and in the circumstances of the case the tribunal was right in holding that software expenditure is to be treated as a revenue expenditure and not as a capital expenditure ? '

3. The assessee claimed that they had used software as an apparatus and with that carried the business of banking and they claimed it as revenue expenditure. The Assessing Officer rejected the claim of the assessee stating that the expenditure is capital in nature as it give an enduring benefit. For the Assessment Years 2000-01 and 2001-02, the Assessing Officer has referred to a letter given by the assessee stating that the software used would benefit the assessee in enhancing the performance and that too, for a considerable period of time. On appeal before the Tribunal, the assessee contended that in view of the advanced technology, the software becomes obsolete within short intervals. Further the software purchased were not customer made but one as could be used by anyone and the assessee has only a right to use. The assessee made an alternate submission that if it is treated as capital expenditure, depreciation as applicable to computers also should be granted. The Tribunal, on an appeal filed by the Revenue, followed the decision of Honourable Division Bench of this Court in Commissioner of Income-Tax v. Southern Roadways Ltd. [2008 (304) ITR 84 (MAD)].

4. Mr.T.Ravikumar, learned Standing Counsel for the Revenue, placed reliance on the decision of the Delhi High Court in Bharti Televentures Ltd. v. Additional Joint Commissioner of Income Tax [2013 (81) DTR 0225].

5. We have gone through the facts of the said case and we find that in the said case, the assessee was a telecom operator. After scrutinizing the lease agreement, the Assessing Officer noted that the cost of plant and machinery

given on lease by the assessee was reflected in the balance sheet of the assessee under the head 'plant and machinery given on lease' and that apart, the assessee has incurred expenditure towards installation of plant and machinery and in addition to it, it had incurred expenditure towards software expenses. The assessee claimed the installation expenses as deduction debiting it to the profit and loss account and the software expenses were treated in the accounts as deferred revenue expenditure, which was written off in the previous order. The question arose as to whether the expenditure has to be treated as revenue expenditure or capital. The assessee contended that the software was a pre-designed software and not customized to suit its particular requirement. Considering the said factual position, the Tribunal analysed the terms of the contract and found that the software as well as hardware were made an integral part of the arrangement and the software apparently caters to the hardware and it is necessary for the kind of software to cater to diverse activities such as billing regarding user and analyzing such like activities to promote speed and efficiency and the parties chose to have a composite arrangement is one factor which the Tribunal was entitled to take into consideration. In our considered view, the decision in Bharti Televentures is not applicable to the case on hand as there is no material before the Tribunal or before the Assessing Officer as was pointed out in the said case. As held by the Honourable Supreme Court in Empire Jute Co. Ltd. v. CIT, [1980 (124) ITR 1 (SC)] there may be cases where expenditure, even if incurred for obtaining advantage, of enduring benefit, may, none-the-less, be on revenue account and the test of enduring benefit may break down. It is further held that it is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test and what is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. We are inclined to accept the submission made by the assessee before the Tribunal that in view of the advanced technology software become obsolete within short intervals. Therefore, the Tribunal rightly applied the decision in the case of Southern Roadways Ltd.

The appeals are dismissed. The substantial question of law is answered in favour of the assessee and against the revenue. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

gm

To,

1.The commissioner of Income Tax (Appeals),
No.44,Williams Road,Contonment,
Tiruchirapalli

2.The Additional Commissioner of Income Tax Range -I,
Tiruchirapalli.

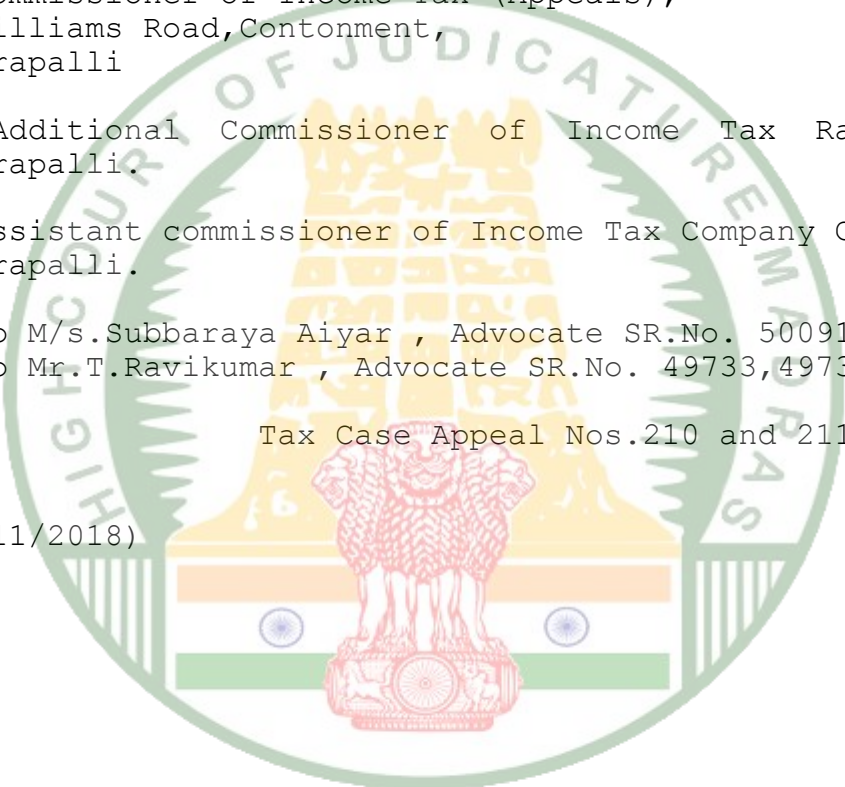
3.The Assistant commissioner of Income Tax Company Circle-I,
Tiruchirapalli.

+2ccs to M/s.Subbaraya Aiyar , Advocate SR.No. 50091,50090

+2ccs to Mr.T.Ravikumar , Advocate SR.No. 49733,49734

Tax Case Appeal Nos.210 and 211 of 2018

ASK(16/11/2018)



सत्यमेव जयते

WEB COPY