IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos.594 and 595 of 2018
and C.M.P.No.11880 of 2018

Commissioner of Income Tax,
Chennai. ... Appellant in both the Appeals

-vs-

M/s.Savera Industries Ltd.,
146, Radhakrishnan Road,
Chennai-600 004.
PAN: AAECS9541D. ... Respondent in both the Appeals

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the common order of the Income-tax Appellate Tribunal 'B' Bench, Chennai, dated 23.11.2016 in I.T.A.Nos.576 and 577/Mds/2016 for the assessment years 2006-07 and 2012-13 respectively.

against the Commissioner of Income Tax (Apeals)-15, Chennai 600 034 ITA No.227/CIT(A)-15/ 14-15 Dated 14/12/2015 PAN No.AAECS9541D Assessment Year 2012-2013 against ITA No.132/CIT/(A)-15/14-15 dated 14/12/2015, and against the order of the Deputy Commissioner of Income Tax, dated 24.10.2014, 03.02.2015 made in PAN No.AAECS9541D for the Assesment Year 2006-2007 and 2012-2013 respectively.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : Ms.K.C.Neelayadakshi
for Mr.Sandeep Bagmar

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals, filed by the Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), are directed against the common order passed by the Income-tax Appellate Tribunal 'B' Bench, Chennai, dated 23.11.2016 in I.T.A.Nos.576 and 577/Mds/2016 for the assessment years 2006-07 and 2012-13 respectively.

2.T.C.A.No.594 of 2018 has been filed raising the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the order of the Tribunal is not perverse on facts.
>
> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that relaying of marble flooring in the place of mosaic flooring is the revenue expenditure."

3.T.C.A.No.595 of 2018 has been filed raising the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the order of the Tribunal is not perverse on facts.
>
> (ii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the expenditure towards air conditioning in Lobby and Resto Pub and expenditure towards dish washing machine and audio/video equipment in Resto Pub is to be treated as revenue expenditure."

4.The Assessing Officer, for the assessment year 2006-07, made certain additions and disallowances on the ground that the expenditure incurred by the assessee for relaying of marble floor in the place of mosaic flooring was treated as capital expenditure, similarly, the wood work done by the assessee, purchase of grinder and kitchen equipment, and television. Accordingly, a sum of Rs.58.4 lakhs was treated as capital expenditure. For the assessment year 2012-13, the Assessing Officer found that the assessee incurred expenditure towards air conditioning in Lobby and Resto Pub and also towards dish washing machine and audio/video equipment in Resto Pub. The Assessing Officer treated the expenditure of Rs.64,33,151/- as capital expenditure and allowed depreciation. The assessee preferred appeal before the Commissioner of Income-tax (Appeals)-15 (for brevity "the CIT(A)"), which was allowed in favour of the assessee against which, the Revenue preferred appeal before the Tribunal. The Tribunal had dismissed the appeal filed by the Revenue. Challenging the same, the Revenue is before us by way of these appeals.

5.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant and Ms.K.C.Neelayadakshi, learned counsel appearing for Mr.Sandeep Bagmar, learned counsel for the respondent.

6.The assessee, running a four star hotel in the city of Chennai, had incurred expenditure for re-place of flooring and purchase of air conditioner, dish washing machine, and audio/video equipments in the pub etc. The question was whether these expenditures should be treated as 'capital' or 'revenue'.

7.We are guided by the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Income-tax vs. Dasaprakash, [1978] 114 ITR 210 (Mad.). In the said case, the assessee-firm was running a hotel and it incurred expenditure for putting decorated mirros with pictures, putting up plaster-moulded roof decoration, fixing plywood panels in the restaurant halls and in some living rooms, fixing carpets in the reception hall, putting frosted glass in an exclusively dining hall, etc. The Income-tax Officer held that these expenditure cannot be said to be on account of current repairs to the building and it brings into existence an asset of endurance in nature. The Commissioner affirmed the view taken by the Assessing Officer, which was reversed by the Tribunal. On appeal by the Revenue before the Hon'ble Division Bench, the Division Bench held that these items are in the nature of petty replacement of items which already existed and, therefore, these could not be taken as capital expenditure at all.

8.Further, it was held that expenditure like putting of decorated mirrors with pictures of religious personages or putting of plaster-moulded roof decoration in the dining-cum-lecture hall was incurred with a view to beautify the premises and this would have to be recorded as revenue expenditure having regard to the nature of business carried on by the assessee. Furthermore, it was pointed out that this fixtures and fittings cannot be removed and used again, and taking note of the nature of business carried on by the assessee and nature of expenditure, the Hon'ble Division Bench held that the Tribunal came to the correct conclusion in holding that those items as revenue expenditure allowable as deduction under Section 37 of the Act.

9.In CIT vs. Ooty Dasaprakash, [1999] 237 ITR 902 (Mad.), the expenditure incurred was for repairs and modernising the hotel by replacing the existing components of the building, furniture and fittings. The Hon'ble Division Bench of this Court, after taking note of the decision in the case of Dasaprakash (supra), held that the expenditure was incurred solely for repairs and modernising the hotel and replacing the existing components of the building, furniture and fittings, with a view to create a conducive and beautiful atmosphere for the purpose of running the business of a hotel. Accordingly, held that the expenditure would fall under the category of 'revenue expenditure' and to be allowed as a deduction under Section 37 of the Act.

10.In Comfort Living Hotels (P.) Ltd. vs. CIT, [2014] 363 ITR 182 (Delhi), the assessee, who had undertaken extensive repairs on the ground floor, removed walls in the rear room and constructed a bar. The question was whether the expenditure was capital in nature or revenue. In the said decision, it was held that the Hon'ble Division Bench after taking into consideration the decision of the Hon'ble Supreme Court in the case of Empire Jute Co. Ltd. vs. CIT, [1980] 124 ITR 1 (SC), held that an action merely facilitates the assessee's business making it profitable, whilst leaving the fixed capital untouched, is to be treated as revenue expenditure.

11.In CIT vs. Lake Palace Hotels and Motels (P.) Ltd., [2002] 258 ITR 562 (Rajasthan), the assessee incurred expenditure towards repairs and renovations for the hotels, which were necessitated on account of the Commonwealth Foreign Ministers' Conference. The question was whether the expenditure incurred by the assessee-company, for the purpose of modernisation, fall in the category of 'revenue expenditure' or 'capital expenditure'. Taking into consideration all the decisions on the point including the decision in the case of Empire Jute Co. Ltd. (supra), and Dasaprakash (supra), it was held that the finding recorded by the Tribunal holding that the expenditure is revenue does not call for. The above decisions would squarely support the case of the assessee.

12.It is relevant to point out that the Hon'ble Apex Court in Assam Bengal Cement Co. Ltd. vs. CIT, [1955] 27 ITR 34, explained as to how to determine whether the expenditure was capital or revenue. It held that the aim and object of the expenditure would determine the character, namely, whether it was capital expenditure or revenue expenditure. If the expenditure was made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it was properly attributable to capital and was of the nature of capital expenditure. If, on the other hand, it was made for running the business or working it with a view to produce profits, it was revenue expenditure.

13.The learned Senior Standing Counsel for the Revenue placed reliance on the decision of the Hon'ble Division Bench of the High Court of Allahabad in the case of U.P.Hotels Ltd. vs. CIT, [2017] 88 taxmann.com 621 (Allahabad). In the said case, the assessee incurred expenditure for repairs, replacement and renovation of hotel rooms. The Court followed the decision of the Hon'ble Supreme Court in CIT vs. Sri Mangayarkarasi Mills (P.) Ltd., [2009] 182 Taxman 141 (SC) and allowed the appeal in favour of the Revenue.

14.We have examined the said decision and we find that no specific reasons have been assigned as to how the decision in the case of Sri Mangayarkarasi Mills (P.) Ltd. (supra) would apply to the facts and circumstances of the said case. Furthermore, the decision of the Hon'ble Supreme Court in Empire Jute Co. Ltd. (supra) as well as other decisions on the point in Dasaprakash (supra) and Ooty Dasaprakash (supra) were not brought to the notice of the Division Bench. Therefore, we find the said decision is distinguishable.

15.Apart from the above, in the assessee's own case, in CIT vs. Savera Industries Limited (T.C.A.No.839 of 2016: Dated 11.01.2017), the Hon'ble Division Bench of this Court dismissed the appeal filed by the Department challenging the order passed by the Tribunal, which set aside the order passed by the Commissioner of Income Tax invoking his power under Section 263 of the Act, in respect of the assessment year 2010-11. Though the Revenue may be right in stating that the decision arises out of an order under Section 263, what is important to note is that the revision was done by the Commissioner on the ground that the expenses incurred by the assessee for renovation of the hotel has to be treated as capital expenditure. The Hon'ble Division Bench held that the invocation of the power under Section 263 was impermissible in the given facts and circumstances of the case. Thus, as a consequence of which, the assessment, which was framed for the year 2010-11 in favour of the assessee, stood confirmed. Therefore, we are of the view that the decision in T.C.A.No.839 of 2016 will also aid the assessee in the present case.

16.Thus, for the above reasons, we find the Tribunal was fully justified in dismissing the appeal filed by the Revenue. In the result, the appeal filed by the Revenue, is dismissed and the substantial questions of law are answered against the Revenue. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Income-tax Appellate Tribunal 'B' Bench, Chennai.

2.The Commissioner of Income Tax (Appeal)-15,
Chennai 600 034.

3.The Deputy Commissioner of Income Tax,
Corporate Circle 6(1),
Chennai 600 034.

4.The Assistant Commissioner of Income Tax Compny Circle VI(1)
Chennai.

+1cc to M/S.Sandeep Bagmar, Advocate Sr.87607
+1cc to M/S.T.R.Senthilkumar, advocate sr.87673

T.C.(A) Nos.594 and 595 of 2018

vsn Ii[co]
srg 24/01/2019