

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal Nos.282 & 283 of 2009

Commissioner of Income Tax
Salem.

... Appellant in both TCAs

Vs.

M/s.The Jawahar Mills Ltd.,
No.4, Nehru Nagaram
Salem 636 005.

.... Respondent in both TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench dated 04.02.2005 in ITA No.1334/Mds/99 and ITA No.1335/Mds/99 for Assessment Years 1993-94 and 1994-95 respectively, preferred against the order dated 18.06.1999 made in ITA.No.36/1999-2000, ITA.No.34/1999-2000 respectively on the file of the Commissioner of Income Tax (Appeals)-VII, Chennai filed against the Assessment order dated 26.03.1999 on the file of the Joint Commissioner of Income Tax, Special Range, Salem -7, for the Assessment year 1993-1994 and 1994-1995 respectively.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
Assisted by V.Pushpa
Junior Standing Counsel

For Respondent : Notice served
No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

The Revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 by raising the substantial question of law arising from the order in ITA No.1334/Mds/99 and ITA No.1335/Mds/99 respectively on 04.02.2005 for Assessment Years 1993-94 and 1994-95.

2.The Tribunal by its impugned order allowed the cost of replacement of machineries like Motor Rollers, Spindles, Gears

etc. in the Textile Mill of the Assessee with the following observations:

"9.I.T.A.Nos.1334 & 1335/Mds/99: These two appeals are filed by the Revenue against the order of the CIT (Appeals) and relate to the assessment years 1993-94 and 1994-95. The solitary issue raised in these appeals relates to the question as to whether cost of replacement of machinery could be claimed as revenue expenditure. The replaced machineries are an assemble of Motor Rollers, Spindles, gears etc. The Assessing Officer observed that the machineries under consideration are indigenous products made in India and are nothing but modernized system of automatic controllers installed to replace manual labour. He, therefore, disallowed the claim of the assessee. The CIT (Appeals), however, allowed the claim of the assessee. We find that the jurisdictional High Court in the case of CIT v. Salem Co-operative Spinning Mills Ltd. (148 ITR 176) (Mad) has held that expenditure on replacement of conventional card clothing by metallie card clothing is revenue expenditure and as such exigible to deduction under Section 37. We do not find any infirmity in the order of the CIT (Appeals). Accordingly, the order of the CIT (Appals) is upheld. 10. In the result, the Revenue's appeal's are dismissed."

3. The present appeals were admitted by the Coordinate Bench of this Court on 30.04.2009 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 machinery was allowable as revenue expenditure?"

4. The learned Senior Standing Counsel for the Revenue submitted that the controversies now settled by the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Gujarat Vs. Sarangpur Cotton Mfg. Co. Ltd., [2017] 80 taxmann.com 260 (SC), in which, the Hon'ble Supreme Court has held as under:

"8. Learned Additional Solicitor General submitted that the view taken by the Gujarat High Court by relying on two decisions in the case of CIT v. Baroda Industrial Development Corpn. Ltd. [1992] 198

ITR 716/65 Taxman 359 (Guj.) and in the case of CIT v. Satyadev Chemical Ltd. [1997] 226 ITR 95 (Guj.) has been impliedly overruled by this Court in the case of CIT v. Sraavana Spg. Mills (P.) Ltd. [2007] 293 ITR 201/63 Taxman 201 (SC). She submitted that each items for which deduction under the head "current repairs" was sought is a machine by itself and therefore deduction under Section 31(i) cannot be allowed. She invited out attention to paragraphs 9, 10, 12, 13 and 14 of hte judgment in the case of Saravana Spg. Mills (P.) Ltd. (supra) and submitted that if the current repairs related to independent machines itself instead of repairs of a part of that machine, deduction cannot be granted under Section 31(i) of the Income Tax Act, 1961. In Saravana Spg. Mills (P) Ltd. (supra) this Court has held that in a textile mill there are several department/divisions. In each department/division there are several machines and perform different functions. Therefore, when each of the Department/Division perform different functions, repair/substitution of an old machine will not come within the definition of the word "current repairs" and deduction cannot be claimed thereunder.

9. In this view of the matter, we are of the considered opinion that the impugned judgment and order passed by the Gujarat High Court as also the orders passed by the Income Tax Appellate Tribunal and the Commissioner of Income Tax Appeals on this issue cannot be sustained and are thereby set aside. It is held that the respondent is not entitled for any deduction under the head "current repairs" as claimed and allowed by the two authorities."

5. None has appeared on behalf of the respondent/Assessee despite service.

6. The replacement of the machineries in the present case which came up for consideration by the Assessing Authority as per the details of Replacement of Machinery submitted by the Assessee himself, which form part of the Assessment Order are quoted below for ready reference.

"THE JAWAHAR MILLS LIMITED, SALEM - 5
Assessment Year 1993-94 Y.E. 31.3.93
Details of Replacement of Machinery

Sl. No.	Name of Supplier	Name of Machinery	Invoice No. & Date	Invoice Amount-Rs.	Lorry Freight	Erection Charges	Total Value Rs.	Date of Commencement
1	Texmaco Ltd., Calcutta	2 Nos Texmaco Howa CM 80 Model Card Nos.1322 & 1327	TMC/MS/324 /92-93 dt. 30.07.92	26,20,696	37,325	19,860	26,77,881	14.09.92
2	Texmaco Ltd., Calcutta	1 No Texmaco Howa Card CM 80 Card No.1326	TMC/MS/413 /92-93 dt. 30.08.92	13,451,136	24,850	12,675	13,82,661	28.09.92
3	Texmaco Ltd., Calcutta	1 No Texmaco Howa Card CM 80 Card No.1336	TMC/MS/680/92-93 dt. 17.12.92	13,56,732	23,050	18,825	13,98,607	22.01.93
Total :							54,59,149	

7.The total replacement cost of three machineries in question purchased by the Assessee amounting to Rs.54,59,149/- came to be allowed by the Tribunal as 'repairs maintenance expenditure' or 'revenue expenditure'. The said findings of the learned Tribunal are clearly contrary to the decision of the Hon'ble Supreme Court (cited supra) and therefore, the view of the Tribunal cannot be sustained and the replacement of the machineries as a whole by the Assessee cannot be held to be current repairs or allowable revenue expenditure.

8.Therefore, respectfully following the binding precedent of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Gujarat V. Sarangpur Cotton Mfg. Co. Ltd., the present Appeals filed by the Revenue deserves to be allowed and the substantial question of law framed is answered in favour of the Revenue and against the Assessee, we accordingly do so. The Appeals are accordingly allowed. No order as to costs.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

- 1.The Registrar, Income Tax Appellate Tribunal, Chennai 'D' Bench, Chennai
- 2.The Commissioner of Income Tax, Appeals VII, Chennai.
- 3.The Joint Commissioner of Income Tax, Special Range, Salem.

AKM/28.01.2020 /4P-4C/
AKM/03.02.2020

T.C.A.Nos.282 & 283 of 2009