IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM :

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

Tax Case Nos.338 & 339 of 2009

Commissioner of Income Tax-III,
Coimbatore. ...Appellant in both the appeals

-vs-

M/s.Kongarar Spinners Limited,
Pethappampati Post,
Udumalpet - 642 205 ...Respondent in both the appeals

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, are directed against the common order passed by the Income Tax Appellate Tribunal "D" Bench, Chennai in I.T.A Nos.202/Mds/2002 & 313/Mds/2002 dated 20.06.2005 for the assessment years 1994-95, 1995-96,

Appeal against the order of the Commissioner of Income Tax (Appeals) Coimbatore Dated 19.12.2001 made in Appeal No.122-C/2000-01 for the year 1995-96 and Appeal No.121-C 2000-2001 dated 07/01/02 against the Assessment Order of the Deputy Commissioner of Income Tax, III Coimbatore made in PAN Number 47-023- CT -9389 for Year 1994-95 CMo.10/P80/99-2000 and PAN No.47-023-CT-9389 for Assessment Year 1995-96.

For appellant : Mr.T.R.Senthil Kumar, assisted by Mrs.K.G.Usha Rani

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

These Tax Case Appeals by the Revenue filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) are directed against the common order passed by the Income Tax Appellate Tribunal "D" Bench, Chennai in I.T.A Nos.202/Mds/2002 & 313/Mds/2002 dated 20.06.2005 for the assessment years 1994-95, 1995-96.

2.The above Tax Case Appeals have been admitted 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.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usha Rani for the appellant/Revenue.

4. Though the respondent has been served and their name is printed in the cause list, none appeared on its behalf. An identical substantial question of law framed for consideration in these appeals were subject matter of consideration before the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Gujarat Vs. Sarangpur Cotton Mfg. Co. Ltd., in C.A.No.2984 of 2007 dated 28.03.2017. The Hon'ble Apex Court after taking into consideration the decision in the case of Commissioner of Income Tax Vs. Saravana Spinning Mills (P) Ltd., reported in [2007] 293 ITR 201 (SC) allowed the Revenue's appeal.

5. At this juncture, it would be beneficial to refer to the order passed by the Hon'ble Apex Court in the case of Sarangpur Cotton Mfg.Co.Ltd.,(Supra).

> “1. The present appeal has been filed against the judgement and order dated 3rd July, 2002 passed by the High Court of Gujarat at Ahmedabad in Income Tax Reference No.141 of 1989. The following question of law has been raised in the appeal:-
>
> “Whether the Higher Court was right in law in holding that the assessee was entitled to deduction on account of revenue expenditure incurred on machineries replaced for the value of Rs.26,84,235/-”
>
> 2. Briefly stated the facts, which give rise to this appeal, are as follows:
>
> 3. The respondent-assessee is a public limited company and is engaged in the business of manufacturing cotton yarns and textile. During the assessment year 1974-75, the respondent-assessee has claimed deduction of Rs.35,49,011/- as repairs and replacement of machinery expenditure on conversion material etc. The assessing authority disallowed a sum of Rs.27,71,270/- out of the aforesaid revenue expenditure claimed by the respondent on the ground that it related to installation of the above

machinery and is in the nature of outlay of capital expenditure.

4. Feeling aggrieved, the respondent-assessee preferred appeal before the Commissioner of Income Tax Appeals. The Commissioner of Income Tax Appeals vide order dated 29th September, 1983 allowed Rs.26,84,235/- as admissible revenue expenditure and at the same time directed the assessing officer to withdraw the depreciation and development rebate granted on these capitalized items, as they have been treated as revenue expenditure.

5. The Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide order dated 12th September, 1985 agreed with the order passed by the Commissioner of Income Tax Appeals and dismissed the appeal.

6. Still feeling aggrieved, the Revenue department preferred a Reference Application before the Gujarat High Court. The high Court by the impugned order had answered the question of law raised by the appellant herein in favour of the respondent-assessee.

7. We have heard the Ms.Pinky Anand, learned Additional Solicitor General appearing on behalf of the appellant-revenue department. No one has entered appearance on behalf of the respondent-assessee.

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 Vs Baroda Industrial Development Corporation Ltd., [1992] 198 ITR 716/65 Taxman 359(Guj.) and in the case of CIT Vs. Satyadev Chemical Ltd., [1997] 226 ITR 95(Guj) has been impliedly overruled by this Court in the case of CIT Vs. Saravana Spg.Mills(P) Ltd., [2007] 293 ITR 201/163 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 our attention to paragraphs 9,10,12,13 and 14 of the judgement 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 judgement 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.
10. The appeal succeeds and is allowed.
11. There shall be no order as to costs.
12. Pending application, if any, also stands disposed of."

6. We have gone through the facts in the instant case and we find it to be identical to that of the facts dealt with by the Hon'ble Supreme Court in the case Sarangpur Cotton Mfg.Ltd. (Supra).

7. Thus, by following the said decision, these appeals are allowed and the substantial question of law is answered in favour of the Revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.Income Tax Appellate Tribunal "D" Bench, Chennai.

2.The Commissioner of Income Tax, Coimbatore.

3.The Deputy Commissioner of Income Tax III, Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.46840

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ks[co]
srg 19/07/2019