In the High Court of Judicature at Madras

Dated : 27.6.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.685 & 686 of 2009

The Commissioner of Income
Tax, Coimbatore ...Appellant in both appeals

Vs

Sivaraj Spinning Mills Ltd.,
Tirupur ...Respondent do

APPEALS under Section 260A of the Income Tax Act, 1961 to set aside the common order dated 27.6.2001 made in ITA.Nos.1738/Mds/1999 and 1711/Mds/2000 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench respectively for the assessment years 1996-97 and 1997-98 against the order of the commissioner of Income Tax (appeals) Coimbatore dated 29.09.2000 made in ITA.No.11-C 2000-2001 and the order dated 29.10.1999 made in ITA.No.398-C/98-99 against the Assessment order of Deputy Commissioner of Income Tax,Special Range II,Coimbatore for PAN/GIR NO.CV.2273/SR-II/97-98/CBE for AY 1996-97 &1997-98.

For Appellant : Mr.T.R.Senthilkumar &
Mrs.K.G.Usharani
For Respondent : Mr.R.Sivaraman

COMMON JUDGMENT
(Judgment of the Court was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usharani, learned Standing Counsel for the Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent – assesssee.

2. These appeals are filed by the Revenue under Section 260A of the Income Tax Act, 1961 to set aside the common order dated 27.6.2001 made in ITA.Nos.1738/Mds/1999 and 1711/Mds/2000 on the file of the Income Tax Appellate

Tribunal, Madras 'B' Bench respectively for the assessment years 1996-97 and 1997-98.

3. The appeals were admitted on 10.8.2009 on the following substantial questions of law :

> "i. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure/current repairs? And
>
> ii. Whether, in the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure?"

4. It is submitted by the learned counsel for the respondent – assessee that the substantial questions of law framed in these appeals are squarely covered against the assessee in the decision rendered by us in the case of CIT-III, Coimbatore Vs. M/s.Kongarar Spinners Limited [TCA.Nos. 338 and 339 of 2009 dated 10.6.2019].

5. In the said decision rendered by us, after following the decision in the case of CIT, Gujarat Vs. Sarangpur Cotton Mfg. Co. Ltd. [C.A.No.2984 of 2007 dated 28.3.2017], we held against the assessee. The relevant portions in the said decision rendered by us in the case of M/s.Kongarar Spinners Limited read as follows :

> "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.”

6. Accordingly, the above tax case appeals are allowed and the substantial questions of law are answered in favour of the Revenue and against the assessee. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Income Tax Appellate Tribunal,
Madras 'B' Bench.

2.The Commissioner of Income Tax (Appeals)
Coimbatore

3.The Joint Commissioner of Income Tax,
Special Range II,Coimbatore.

+1cc to Mr.T.R.Senthilkumar , Advocate SR.No. 54250

TCA.Nos.685 & 686 of 2009

A.SK(08/08/2019)