IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

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

Tax Case Appeal No.469 of 2018

The Commissioner of Income Tax,
Chennai. .. Appellant

-vs-

M/s.Chennai Petroleum Corporation Ltd.,
536, Anna Salai, Teynampet,
Chennai-600 018.
PAN: AABCM4392C .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order dated 07.12.2017 on the file of the Income-tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.853/Mds/2013 for the assessment year 2006-07, and against the order of the Commissioner of Incoem Tax(Appeals) (LTU) Large Taxpayer Unit, Anna Nagar Western Extension, Chennai-101, dated 08.01.2013 made in ITA.No.66/11-12/LTU(A) and against the order of the Joint Commissioner of Income Tax, LTU, Chennai dated 30.11.2011, made in order U/s.147 r.w.s 143(3) of the I.T Act Assessment year 2006-07.

For Appellant : Mrs.R.Hemalatha,

For Respondent : Mr.R.Venkatanarayanan,
for M/s.Subbaraya Aiyar,
Padmanabhan

JUDGMENT

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

This appeal has been filed by the appellant/Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), challenging the order dated 07.12.2017, passed by the Income-tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.853/Mds/2013 for the assessment year 2006-07.

2.The Revenue has raised the following substantial questions of law for consideration:-

> "(i) Whether the Software License Fees and Maintenance Fees paid by the Assessee is Capital expenditure or Revenue expenditure?
>
> (ii) Whether the license fee paid by the assessee for purchase of software which enhances the efficiency of the operation services of its business giving an enduring benefit would be capital expenditure only?"

3.We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.R.Venkatanarayanan, learned counsel accepting notice for the respondent/assessee.

4.The Revenue has assailed the order passed by the Tribunal dated 07.12.2017, confirming the order passed by the Commissioner of Income-tax (Appeals), Large Taxpayer Unit, Chennai (for brevity, "the CIT(A)"), with regard to the expenditure incurred by the assessee for maintenance of software and whether it is to be treated as a revenue expenditure or capital expenditure.

5.The sheet anchor of the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel is that the Tribunal was solely guided by the decision of the Division Bench of this Court in the case of Commissioner of Income-tax vs. Southern Roadways Ltd., reported in [2008] 304 ITR 84 (Madras) and this judgment of the Division Bench having been reversed by the Hon'ble Supreme Court, the order passed by the Tribunal calls for interference.

6.In our considered view, this is not the only aspect in considering whether the Revenue has made out a case for entertainment. What is required to be seen is whether the order passed by the CIT(A) in allowing the expenditure as a revenue expenditure was justified or not. We have gone through paragraph 5 of the order passed by the CIT(A), dated 08.01.2013, which reads as follows:-

> "5.The next issue pertains to disallowance of Rs.98,01,867/- towards expenditure on software license fees and maintenance fees paid to aspen tech by treating as capital expenditure. The AO stated that during the current year, the assessee has incurred an amount of Rs.98.02 lakhs for the purpose of software and the same was claimed as revenue expenditure. He observed that the assessee has not made TDS as per Chapter XVII B of the Income Tax Act on the above payment for the purpose of software. Since, the payment for the purchase of software is tantamount to the payment

for the purpose of royalty, the said expenditure cannot be allowed as per the provisions of Section 40(a)(i)/40(a)(ia) of the Income tax Act. He further observed that the purchase of software was made for the purpose of getting enduring benefit of the assessee company. Therefore, the above said expenditure can be treated only as capital expenditure............

5.1. The appellant contested the above addition. The written submissions of the ld.AR are as follows:

"The Appellant paid the software license fees and maintenance fees of Rs.98,01,867/- to Aspen tech for scheduling models like Fuel refinery model, Lube refinery model, process industry modeling system which is used by the refinery for making decision support solution for optimizing production.

The software maintenance support fees are paid on a yearly basis and hence the expenditure is towards the maintenance of the software and TDS for such payments have been duly deducted and paid................

5.2............

It is pertinent to note that the appellant had paid software license fees and maintenance fees of Rs.98,01,867/- to Aspen Tech for the system which is used by the refinery for making decision support solution for optimizing production. Moreover, these are paid on a yearly basis and therefore, they are towards maintenance of the software and TDS was also duly deducted and paid. As the expenditure is in the nature of recurring, it has to be treated as revenue expenditure. On the background of the factual positions and judicial precedents, this ground is allowed."

7.The above factual finding recorded by the CIT(A) clearly reveals that the expenditure incurred by the assessee is recurring in nature and has to be treated as revenue in nature. Though the Tribunal has referred to the decision of the Division Bench in Southern Roadways Ltd. (supra), yet it has gone through the findings recorded by the CIT(A) and affirmed the findings.

8.Very recently, we had an occasion to consider somewhat a similar question in the case of Commissioner of Income Tax, Trichy vs. The Lakshmi Vilas Bank Ltd., [2018-TIOL-1701-HC-MAD-IT] and dismissed the tax case appeals filed by the Revenue. This decision of ours has been confirmed by the Hon'ble Supreme Court in CIT vs. Lakshmi Vilas Bank Ltd., [2019-TIOL-155-SC-IT by which, the delay in filing the special leave petitions before the Hon'ble Supreme Court was condoned and the special leave petitions were dismissed.

9.Mrs.R.Hemalatha, learned Senior Standing Counsel referred to a decision of the Division Bench of the High Court of Rajasthan in the case of Commissioner of Income-tax vs. Arawali Construction Co. (P) Ltd., reported in [2003] 259 ITR 30 (Rajasthan).

10.We find that in the said case, the payment was not made as consultancy fee to Hindustan Computers and the payment was made for outright sale of 'computer software' which is used as technique in mining and operations. On facts, the Court held that the acquisition of technical know-how is a capital expenditure. In the instant case, as noticed by us and referred to above, the CIT(A) has examined the factual position and found that the expenditure is in the nature of revenue expenditure. Therefore, the decision in Arawali Construction Co. (P) Ltd. (supra) is distinguishable on facts.

11.Mrs.R.Hemalatha, learned Senior Standing Counsel referred to the decision of the High Court of Delhi in the case of Bharti Televentures Ltd. vs. Additional/Joint Commissioner of Income-tax reported in [2013] 29 taxmann.com 326 (Delhi).

12.We have gone through the facts of the said case, wherein, in the computation of income accompanying the return, the software expenses of Rs.2,69,35,669/- was claimed as a deduction. This was disallowed by the Assessing Officer and the appeal filed before the CIT (Appeals) was dismissed and confirmed by the Tribunal. This order was affirmed by the High Court of Delhi, in which, it noted that only the Tribunal had the benefit of considering all documents which included the lease agreement with Bharti Telenet and the license agreement, dated 11.11.1996, whereby, the assessee secured license to exploit the software, provided it procured hardware as per agreed specification and also complied with the order by the lessor. Further, it held that the software as well as hardware were made an integral part of the arrangement. The software apparently caters to the hardware. Thus, on facts, the High Court of Delhi affirmed the factual finding rendered by the Assessing Officer, the CIT (Appeals) and the Tribunal.

13.We find the decision is wholly inapplicable to the assessee's case.

14.Thus, for the above reasons, the appeal is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Joint Commissioner of Income Tax,
Large Taxpayer Unit, Chennai.

2.The Commissioner of Income-tax (Appeals),
Large Taxpayer Unit, II Floor,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension, Chennai-600 101.

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

+1cc to Mr.T.Ravi Kumar, Advocate sr.48994
+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate sr.49642

T.C.A.No.469 of 2018

br(co)
nr 21/08/2019