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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 15th February, 2019.

\+ ITA 159/2019

MAHLE ANAND FILTER SYSTEMS PVT. LTD.
(FORMERLY KNOWN AS MAHLE
FILTER SYSTEMS PVT. LTD. ..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr.Aniket D. Agrawal & Mr.Neeraj Jain, Advs.

versus

ACIT, CIRCLE-6(1), NEW DELHI ..... Respondents

Through: Mr. Sanjay Kumar & Mr. Asheesh Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. The assessee questions the order of the Income Tax Appellate Tribunal (ITAT) for A.Y. 2008-09 and submits that the question of law arises with respect to the disallowance of ₹ 5.8crores, made by the Revenue and upheld by all Appellate Authorities.

2. The assessee *inter alia* had entered into a lease agreement with M/s.Anand Automotive Systems Ltd. As part of the lease agreement, it was required to pay ₹ 5.8 crores as security deposit. This amount was reflected in its balance sheet and in the capital under assets, as "receivables". On

account of unforeseen circumstances i.e. sealing of the premises on account of non-conforming user by directions of the Supreme Court through the Monitoring Committee, the premises could not be used. The petitioner, therefore, sought to vacate it; this resulted in the dispute between the lessor and the appellant/lessee. To end the dispute, the lessee i.e. assessee agreed not to claim the security deposit of ₹ 5.8 crores. As a result, it sought to claim the amount as deduction. The AO disallowed this holding that such disallowance was impermissible; the CIT(A) and the ITAT relying upon the *Commissioner of Income Tax vs. Triveni Engg. & Industries Ltd.* 343 ITR 245 (Del.), upheld the disallowance.

3. Learned Senior Counsel for the assessee urges that the ruling in *Triveni Engineering* is inapplicable because of peculiar facts of that case. It was highlighted that the security deposit given by original assesee, was given to one entity which subsequently amalgamated with the assessee [*Triveni Engineering and Industries Ltd.*]. The treatment sought to be given by the original company, was assessed in the hand of the assessee in *Triveni Engineering* (supra). It is submitted that these circumstances mark a very important distinguishing factor which ought to persuade this Court not to follow *Triveni Engineering*. It was furthermore urged that the decision of the Supreme Court in *CIT vs. Madras Auto Services (P.) Ltd.* 233 ITR 468 (SC), clearly enunciated the law on this aspect. Learned counsel highlighted that in the facts of that case, the assessee had acquired a long lease and was permitted to undertake construction on the land. The expenditure incurred towards the construction was treated to be as allowable deduction. It is argued on behalf of the assessee further that the amount was paid by way of

damages, it was in the course of business and therefore, entitled to deduction as claim.

4. This Court in *Triveni Engineering* (supra) dealt with a similar situation as the present case and held as follows:

> "*15. Coming to the security deposit written off by the assessee, the moot question is as to whether the advances were given for securing the capital assets. It is not disputed by the Department that the payment of security deposit to landlords was for obtaining use of premises for the purposes of business against the payment of rent. The contention of the assessee, in this backdrop, is that this payment was clearly in the revenue field, viz., for facilitating carrying on of business more profitably and efficiently while leaving the fixed capital untouched. Learned counsel for the Revenue, however, argues that the security deposits were given for obtaining the premises on rent and thus, the assessee had obtained a right to use the property, i.e., tenancy right, which is a capital asset.*
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> *16. In order to appreciate the controversy, we may first state the true nature of this deposit. When the premises were taken on rent by the company, the payments in the form of security deposits were given to the land lords. Since the Rent Agreement entered into with the said landlords has not been produces, which could have shown the purpose for which security deposits were made, in the absence thereof, we presume that normal practice which is followed in giving such security deposits existed here also. On that premise, it can be inferred that these were refundable security deposits, which were to be given back by the landlords to the company on the conclusion of tenancy period and surrendering of the leased premises by the company to the landlords. Therefore, these security deposits were not in the form of rent. The question would be when such a security deposit has become non-*

recoverable for some reasons whether it can be allowable as deduction under Section 28 of the Act. The deposits were not given in the ordinary course of business either. These were given for securing the premises on rent; albeit for the purpose of carrying on business therein. Once we keep in mind this true nature of deposits, we find force in the submission of Ms. Bansal, learned counsel for the Revenue.

17. We may point out that the assessee had relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income Tax v. Madras Auto Service (P) Ltd.*** *[233 ITR 468]. However, that judgment would not be applicable to the facts of the present case. The expenditure incurred on the construction of building of a leased property was treated as revenue expenditure by the Supreme Court, as the assessee was getting business advantage and was acquiring the business asset in the context of specific Clause in the lease deed. Therefore, the property was not treated as that of the lessor. Further, the Supreme Court found that by incurring the expenditure of this nature, the assesse had taken the advantage in the form of reduced rent for a much longer period. This judgment is, thus, not applicable in the present context.*"

5. The distinctions sought to be made by the assessee/appellant that *Triveni Engineering* (supra), was decided in peculiar circumstances of the case, since the amalgamated company's books were assessed as it were in the hands of the transferee company [Triveni Engineering], in the opinion of this Court, is an insubstantial aspect which is not sufficient to distinguish the ruling. The reasoning in *Triveni Engineering* (supra) is not limited to such a fact situation. Furthermore, this Court notices that the decision in *Madras Auto Services (P.) Ltd.* apart from other judgments were also noticed by this Court in *Triveni Engineering* (supra).

6. This Court is also un-persuaded with the argument that the amount of ₹5.8 crores, could be treated as a revenue expenditure merely because it was paid in the course of a dispute. Clearly, the character of the amount was of a capital nature and remained so; all that the assessee did was to agree that it would not claim a refund out of ₹ 10.58 crores, agreeing to forgo ₹ 5.8 crores.

7. As a result, the Court is of the opinion that given the concurrent nature of the findings, no question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J.

PRATEEK JALAN, J.

FEBRUARY 15, 2019
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