

In the High Court of Judicature at Madras

Dated : 05.10.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.104 & 105 of 2019 & CMP.No.2705 of 2019

The Commissioner of Income Tax,
Income Tax Circle 1, Tirunelveli

...Appellant/Appellant in both TCA

Vs

Shri.N.Viswanath

....Respondent/Respondent in both TCA

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 12.7.2018 made in ITA.Nos.1934 & 1935/ Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench respectively for the assessment years 2008-09 and 2009-10 and against the order of the Commissioner of Income Tax (Appeals)-3, Madurai dated 16/05/2017 in ITA.No. 319/2016-17 (TCA.104/2019) in ITA.No. 318/2016-17 (TCA.105/2019) and against the Order of the Deputy commissioner of Income Tax Central Circle -1 (1), Chennai - 34 dated 31/03/2016 in PAN.AAJPN 8275H ((TCA.104/2019) & (105/2019)) respectively.

For Appellant :Mrs.V.Pushpa, SC

For Respondent: Mr.Venkatanarayanan for
M/s.Subbaraya Aiyer Padmanabhan

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

We have heard Mrs.V.Pushpa, learned Standing Counsel appearing for the appellant - Revenue and Mr.Venkatanarayanan, learned counsel appearing on behalf of the respondent - assessee.

2. These appeals, filed by the Revenue under Section 260A of

the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 12.7.2018 made in ITA.Nos.1934 & 1935/ Mds/ 2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) respectively for the assessment years 2008-09 and 2009-10.

3. The Revenue has filed these appeals by raising the following substantial question of law :

"Whether the Tribunal is right in law to hold that the expenditure incurred by the assessee on the lease premises towards civil works, furniture, etc., is a revenue expenditure, when Explanation 1 to Clause (ii) of Sub-Section (1) of Section 32 of the Income Tax Act, 1961 provides that any capital expenditure on the lease premises is to be taken as capital expenditure?"

4. The respondent - assessee is the legal heir of one late Mr.K.V. Nellaiappan, who was the respondent in TCA.No.1937 of 2008. The said tax case appeal along with TCA.Nos.1929 to 1936 of 2008 were allowed by the Hon'ble Division Bench of this Court vide common judgment dated 15.4.2019.

5. The learned counsel appearing on behalf of the respondent - assessee has sought to distinguish the said common judgment by contending that these cases come under 'low tax effect' and that they are different in facts.

6. The matters arose pursuant to an order under Section 254 of the Act and the business concern, in which, the assessee was a partner, was subjected to search and seizure operations, in the appeals before him, the CIT(A) followed the orders passed by Tribunal in the earlier cases, which were the subject matter of TCA.Nos.1929 to 1937 of 2008.

7. The relevant portions in the said common judgment read as follows :

"15. The primary basis on which the Tribunal had answered the issues in favour of the Assessee was that this Court in Hari Vignesh Motor (P) Ltd., cited supra, following the earlier Judgment of the Hon'ble Supreme Court in Madras Auto Services (P) Ltd., cited supra had held that expenditure incurred in the nature as incurred by the Assessee herein cannot be considered as Capital expenditure. However, as pointed out by Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue,

Madras Auto Service (P) Ltd., related to the Assessment Year 1968-1969. Thereafter, Section 32(1A) had been inserted with effect from 01.04.1970 and this provision had been clarified by Explanation 1 with effect from 01.04.1988. Consequently, the correct provision which is applicable to these cases are Explanation 1 to Section 32(1) of the Act.

16. It is not in dispute that the Assessee had taken on lease the premises and had put up further additional construction and had also renovated and incurred expenses for improvement of the building. The contention of Mr.M.P.Senthil Kumar, learned counsel placed only in the written submissions and not advanced during oral arguments that the Court cannot examine the lease agreements since they were not registered has to be rejected because, the lease documents are being examined only to determine a collateral transaction viz., nature of expenditure incurred by Assessee. It is a fact that the Assessee had taken on lease the premises in consideration. They are not the owners. They always claimed to be lessees only. Consequently, this submission, raised by way of written submission has to be rejected. It had been an admitted stand before the Assessing Officer and before the CIT (Appeals) and before the Tribunal that the Assessee is only a Lessee of the premises in question. This being a fact which had been settled, cannot be re-examined on the basis of the specious argument advanced.

17. A further examination of the facts of the case shows that the Assessee have actually put up substantial construction of enduring benefit and also renovated the building for the purpose of their business. Explanation 1 to Section 32(1) is as follows:-

"[Explanation 1.- Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession

on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

18. This Explanation had been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act 1986 with effect from 01.04.1988. The Judgement heavily relied on by the learned counsel for the Assessee, namely, Madras Auto Services (P) Ltd., cited supra related to the Assessment Year 1968- 1969 before the above provision was brought into effect. The further Judgement relied on by the learned counsel for the Assessee in Hari Vignesh Motors (P) Ltd., cited supra in the course of the said Judgement did not consider the said Explanation. The other Judgement relied on by the learned counsel in TVS Lean Logistics Ltd., cited supra related to totally distinguishable set of facts. In that case, the Assessee had put up construction of a building on a lease hold land. The building was not taken on lease. Consequently, it was held as follows:-

"4.1. It is not in dispute that the assessee had put up the impugned construction of building only on the leasehold land and no building was taken on lease by the assessee. Therefore, the fiction created by Expln. 1 that the building put up by him in the leasehold land or structure or work shall be construed as if the same is owned by the assessee, is not applicable to the case of the assessee and the Expln. 1 to S.32(1) of the Act is not attracted to the instant case of the assessee at all."

The aforesaid Judgement cited by the learned counsel for the Assessee are therefore not applicable to the facts of the present case in view of amended law.

19. In Silver Screen Enterprises Vs. CIT, 85 ITR 0578, (High Court of P & H), while examining whether expenditure incurred on repairs to chairs, renovation of building and modernisation of cinema house taken on

lease by the Assessee, it was held that they are capital expenditure since it brought an enduring benefit. The relevant discussion on this aspect is quoted below:-

"It cannot be denied that the amount spent for the construction of the verandah, office room, side room and bath rooms brought into existence an asset of an enduring nature. It is no one's case that only the existing verandah, office, side room or bath rooms were repaired. What appears is that these constructions were brought into being for the purpose of modernising the cinema hall. Therefore, the construction of verandah, office, side room, etc., for the purpose of modernising the cinema hall brought into existence are asset of enduring nature in the true sense of the word. The object of the assessee in replacing the old wooden chairs by steel chairs was to attract larger and better customers. This was in fact an outlay for the purpose of earning profits or, in other words for the purpose of better business. It was not an expense which was of a recurring nature, and therefore, it can be safely said that the lessee brought into being an asset of an enduring nature. Undoubtedly, it was an improvement. The wooden chairs were replaced. No evidence had been led to show that the wooden chairs had been useless and could not be used for seating the cinema-goers. On the other hand, the stand taken was that the whole object was to modernise the cinema house to bring it in line with the modern show business. The replacement was an improvement of an enduring nature and not mere replacement. Capital expense with regard to a short-term venture, such as a lease for a period, had to be viewed in the context of that lease, namely, its purpose coupled with its duration. Expenditure incurred by the assessee is an expenditure of a capital nature and it brought into being an advantage of an enduring nature and thus it had been rightly treated as such by the Tribunal, except to the extent of the amount found by the Tribunal being on account of repairs."

20. In view of the above propositions,

we are of the considered view that the expenditure incurred by the Assessee in the present case are Capital in nature and come within the mischief of Explanation 1 to Section 32(1) of the Act. The alternate submission advanced by Mr.M.P.Senthil Kumar that the repairs to the premises cannot be capitalised in view of Section 30(a)(i) of the Act is rejected since the renovations made are Capital in nature in the first Assessment Year and only further repairs may attract the provisions under Section 30(a)(i) of the Act. Section 30(a)(i) of the Act is as follows:-

"30. In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed-

(a). Where the premises are occupied by the assessee- (i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs."

21. In the present case, the Assessee had incurred substantial expenditure towards renovation leading to enduring benefit. They are not merely repairs. The Assessee had also incurred expenditures towards improvement and construction of the building. These cannot be termed as 'repairs'. Consequently, this alternate submission is rejected by us. The second alternate submission advanced by Mr.M.P.Senthil Kumar that the case should be remitted back to the Assessing Officer is also rejected since the facts have been addressed and settled by the Authorities below and it had been concurrently found that the expenditure were capital in nature. The issue of bifurcating the said expenses as capital and revenue would therefore not arise.

22. In view of the above reasons, we hold that the substantial questions of law have to be answered in favour of the Revenue and against the Assessee and the Appeals filed by the Revenue have to be allowed. Accordingly, the Appeals are allowed."

8. Following the same, the above tax case appeals are allowed

and the substantial question of law is answered in favour of the Revenue. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

- 1.The Income Tax Appellate Tribunal,
Chennai 'B' Bench.
- 2.The Deputy commissioner of Income Tax,
Central Circle - 1(1),
Chennai - 34.
- 3.The Commissioner of Income Tax (Appeals)-3,
Madurai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.32834

+1cc to Mr.M.Swaminathan, Advocate, S.R.No. 32837

RS

KK(CO)
GN(19/11/2020)

TCA.Nos.104 & 105 of 2019
and CMP.No.2705 of 2019

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