IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

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

T.C.A.Nos.620 & 621 of 2018

Commissioner of Income Tax
Corporate Circle 2
Chennai ... Appellant in both TCAs

Versus

M/s.Hanon Automative Systems India
Private Ltd.,
Keelakaranai Village,
Malosapuram Post,
Maraimalai Nagar,
Chengalpattu District
PAN:AAACM 6890 R
[Name amended vide Court order dated
27.01.2020 made in T.C.A.Nos.620 & 621/2018
& C.M.P.No.12725 of 2018] ... Respondent in both TCAs

Prayer in T.C.A.No.620 of 2018:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 21.12.2016 made in I.T.A.No.2239/MDS/2015 relating to the Assessment Year 2010-11.

Prayer in T.C.A.No.621 of 2018:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 21.12.2016 made in CO.No.15/Mds/2016 in I.T.A.No.2239/MDS/2016 relating to the Assessment Year 2010-11,

against the order dated 10/09/2015 made in ITA No.99/CIT (A)-11/2014-15 passed by the Commissioner of Income Tax (Appeals)-II (i/c), Chennai-34, and against the order dated 04/03/2014 passed by the Assistant Commissioner of Income Tax, Company Circle -III(4), Chennai-34, for the Assessment Year 2010-11.

For Appellant : Mr.S.Rajesh
Standing counsel
[in both T.C.As]

For Respondent : Ms.N.V.Lakshmi
[in both T.C.As]

COMMON JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals have been filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 21.12.2016 passed by the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) in I.T.A.No.2239/MDS/2015 and CO.No.15/Mds/2016 in I.T.A.No.2239/MDS/2016 for the Assessment Year 2010-11. The Revenue has raised the following Substantial Questions of Law for consideration:

> "1. Whether the Tribunal was right in allowing lump sum payment for development of infrastructure for uninterrupted power supply is revenue expenditure u/s 37(1)
>
> 2. Whether the Tribunal was right in holding that the lump sum expenditure incurred for obtaining uninterrupted power supply for 14 years is allowable in one year though the same will result in distorted profit of the assessee."

2. We have heard Mr.S.Rajesh, learned Standing counsel for the appellant / Revenue and Ms.N.V.Lakshmi, learned counsel for the respondent/assessee.

3. The facts of the case lies in the narrow compass. The respondent/assessee paid a sum of Rs.5,61,20,000/- to M/s.Ford India Private Limited to enable them to get continued supply of electricity and entered into an agreement with M/s.Ford India Private Limited, who agreed to establish additional infrastructure facility at their end to ensure uninterrupted power supply to the assessee. The question was whether this expenditure incurred by the assessee was in the capital field or a Revenue expenditure. The Assessing Officer, while completing the assessment vide order dated 04.03.2014 under Section 143(3) of the Act, held that the amount paid by the assessee to M/s.Ford India Private Limited was to improve their asset and such amount spent is non-refundable and even if the assessee company receive 'services' in future, it would be separately governed by a 'separate shared services agreement' and hence,

the amount paid to M/s.Ford India Private Limited was held to be not 'wholly and exclusively' for the assessee's business and it was spent towards the acquisition of a capital asset.

4. The assessee made an alternate claim of depreciation, which was also negatived by the Assessing Officer, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) - 11, Chennai, ['CIT(A)' for brevity]. The CIT(A) by order dated 10.09.2015, held that the expenditure is a capital expenditure, but however allowed the alternate plea of depreciation. The Revenue filed appeal before the Tribunal as against the order of the CIT(A), allowing the claim of depreciation, in which, the assessee filed a Cross Objection, questioning the correctness of the orders passed by the CIT(A), treating the expenditure as capital expenditure. The Tribunal considered the appeal and the Cross Objection and by the impugned order, allowed the Cross Objection and held that the expenditure to be Revenue. Consequently, the appeal filed by the Revenue was dismissed as infructuous. Challenging the said order, the Revenue is before us.

5. Mr.S.Rajesh, learned Standing counsel for the appellant/Revenue, would vehemently contend that by virtue of agreement between the parties, the assessee had enjoyed an enduring benefit of continued supply of electricity and the Assessing Officer and the CIT(A) rightly held the expenditure to be capital in nature. Further, it is submitted that under the same transaction, both M/s.Ford India Private Limited and the assessee had benefitted because M/s.Ford India Private Limited had claimed depreciation and the assessee claimed it an exemption under Section 37 of the Act. Therefore, it is submitted that the order passed by the Tribunal calls for interference. In support of such contention, the learned Standing counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Mother Hospital Private Limited Vs. Commissioner of Income Tax, 2017 79 taxmann.com 375 (SC).

6. Ms.N.V.Lakshmi, learned counsel appearing for the respondent/assessee, referred to the decision of the Hon'ble Supreme Court of India in the case of Empire Jute Co., Ltd., Vs. Commissioner of Income Tax, [(1980) (124 ITR 1)], submitted that the expenditure incurred by the assessee was to ensure that there is an uninterrupted power supply and it is undoubtedly a business expenditure. To the same effect, the learned counsel placed reliance on the decision in the case of Commissioner of Income Tax, Bombay City-I Vs. Associated Cement Companies Ltd., [(172 ITR 257)(SC)], in the case of Sarabhai M.Chemicals Pvt., Ltd., Vs. Commissioner of Income Tax, Gujarat-I [(127 ITR 74)

(Gujarat HC)], in the case of Commissioner of Income Tax Vs. Anand Gum Industries [(154 ITR 680) (Rajasthan HC)] and in the case of Commissioner of Income Tax Vs. Birla Jute Manufacturing Co., Ltd., [(182 ITR 497) (Calcutta HC)].

7. By referring to the above decisions, the learned counsel for the respondent/assessee, submitted that the Tribunal applied the proper test and concluded that the expenditure is Revenue in nature.

8. As could be seen from the observations of the Hon'ble Supreme Court of India in the case of Empire Jute Co., Ltd., (cited supra), wherein it is held that if the advantage consists merely in facilitating the assesses's trading operations or enabling the management and conduct of the assesses's business to be carried on more efficiently or more profitably while leaving the filed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. In the case of Commissioner of Income Tax, Bombay City-I Vs. Associated Cement Companies Ltd., [(172 ITR 257)(SC)], the Hon'ble Supreme Court of India, after taking note of the decision in Empire Jute Co., Ltd.,(cited supra), held that the test of enduring advantage, is not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. The decision of the Hon'ble Supreme Court of India in Commissioner of Income Tax, Bombay City-I Vs. Associated Cement Companies Ltd., (cited supra), also is on the same lines. The decision in the case of Commissioner of Income Tax Vs. Anand Gum Industries (cited supra) and in the case of Commissioner of Income Tax Vs. Birla Jute Manufacturing Co., Ltd.,(cited supra) would also factually assisted the case of the assessee.

9. So far as the decision relied on by the learned Standing counsel for the appellant/Revenue in the case of Mother Hospital Private Limited(cited supra), we find that the factual situation was entirely different as it pertained to an immovable property owned by a company on which a firm was permitted to put up construction and the expenditure incurred in that regard was considered and the nature of transaction was examined and held it to be expenditure in the capital field.

10. In the instant case, though the assessee has parted with substantial funds to M/s.Ford India Private Limited, the capital asset continued to remain the property of M/s.Ford India Private Limited. Issue as to whether for the same asset,

M/s.Ford India Private Limited claimed depreciation and the assessee is claiming exemption under Section 37 of the Act, cannot be a relevant factor. As rightly submitted by Ms.N.V.Lakshmi, learned counsel for the respondent/assessee that this was never the case of the Revenue before the authorities or before the Tribunal. Thus, we are of the considered view that the Tribunal rightly examined the nature of transaction and held that expenditure to be in the Revenue field.

11. For the above reasons, the Tax Case Appeals are dismissed and the Substantial Questions of Law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-II,
(i/C), Chennai-34.

3.The Commissioner of Income Tax,
Company Circle III(4), Chennai-34.

+1cc to M/s.N.V.Balaji, Advocate Sr.34852

sai[co]
srg 02/12/2020