

OD-14

ITAT/167/2018
IA No.GA/1/2018 (Old No.GA/1426/2018)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

THE PRINCIPAL COMMISSIONER OF
INCOME TAX-2, KOLKATA

-Versus-

M/S. KALYANPUR CEMENT LIMITED

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. Avro Majumdar, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 1st December, 2021.

The Court : This appeal has been filed by the revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) is challenging the order dated 6th October, 2017 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.901/Kol/2015 for the assessment year 2010-11.

The revenue has raised the following substantial question of law for consideration:

"a) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, has erred in law in upholding the decision of the commissioner of Income Tax (Appeals) allowing the expenditure of Rs.2,67,46,867/-*

incurred by the assessee on repair of Plant and Machinery without considering that the repair of the Plant and Machinery gives long enduring benefit to the assessee for many years?"

We have heard Mr. Tilak Mitra, learned Counsel for the appellant/revenue and Mr. Avro Majumdar, learned senior counsel for the respondent/assessee.

The short issue which falls for consideration is whether the assessee was right in claiming a sum of Rs.6,95,01,149/- under the head consumer of stores, spares and consumables and Rs.8,89,13,424/- under the head repairs and maintenance to machinery as manufacturing expenses in Schedule-12 of the annual accounts. The assessee's contention was that the repair and maintenance was necessary to keep the plant in running condition. However, the Assessing Officer did not agree with the same and held that the expenses on plant and machinery ultimately gave an enduring benefit to the assessee and, therefore, it is a capital expenditure and it cannot be claimed as deduction as revenue expenditure. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)/CIT(A)-2 who had allowed the appeal by order dated 16th February, 2015.

Aggrieved by the same, revenue preferred appeal before the Tribunal. The Tribunal after noting the facts of the case, as well as the decisions in the assessee's own case for the assessment year 2008-09 which was decided in favour of the

assessee in ITA No.1956/Kol/2013 dismissed the appeal filed by the revenue.

We have perused the order passed by the Tribunal and we found that the Tribunal rightly upheld the decision of the CIT(A) who had taken note of the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax vs. Saravana Spinning Mills (P) Ltd.* reported in (2007)7 SCC 298 wherein it was held that the entire amount on repair and maintenance will have to be treated as revenue expenditure.

Thus, we find that there is no error in the order passed by the Tribunal. In the result, the appeal (ITAT/167/2018) fails and is dismissed. The substantial question of law is answered against the revenue.

The connected application for stay (GA/1/2018 (Old No.GA/1426/2018) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)