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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A. No. 303 of 2009

Commissioner of Income Tax II
Madurai.

.. Appellant

Vs.

K.V. Nellaiappan,
Prop.M/s. Rm K V Enterprises,
North Car Street,
Tirunelveli,
PAN: AAJPN827511

.. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 12.09.2008 in ITA No.2214/Mds/2007 for the assessment year 2003-04. Appeal against the order of the Commissioner of Income Tax (Appeals) - II, Madurai, PAN No.AAJPN8275H, dated 31.08.2007 in ITA No.106/2007-08 for the Assessment Year 2003-2004 against the order of the Assistant Commissioner of Income Tax, Tirunelveli, dated 08.06.2007 PAN No.AAJPN8275H in Assessment Year 2003-2004

For Appellant : Mr. M.Swaminthan
Senior Standing Counsel
assisted by
Ms.V.Pushya Sitaraman
Standing Counsel

For Respondent : No appearance

J U D G M E N T

(Judgment was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 12.09.2008 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in



I.T.A.No.2214/Mds/2007, relating to the assessment year 2003-04.

2.By order dated 28.04.2009, this court admitted the aforesaid tax case appeal on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that expenditure on construction of building in a leasehold premises would amount to revenue expenditure, contrary to the clear provisions of Explanation 1 to Section 32(1) of the Income Tax Act?"

3.When the matter was taken up for consideration, the learned senior standing counsel appearing for the appellant / Revenue submitted that the issue raised in this appeal is squarely covered by the judgment of this Court in Commissioner of Income Tax, Madurai -vs- Viswams [[2019] 105 taxmann.com 289 (Madras)], where identical question was decided against the assessee and the appeal filed by the Revenue was allowed. The relevant paragraphs of the said judgment are usefully extracted hereunder:

"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



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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



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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."

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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. No costs."

4. In the light of the above judgement, which holds the field, the substantial question of law is answered against the assessee and the appeal filed by the appellant / Revenue is allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Commissioner of Income Tax II
Madurai.



2. The Income Tax Appellate Tribunal,
'B' Bench,
Chennai.

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3. The Assistant Commissioner of Income Tax,
Circle - I,
Tirunelveli.

T.C.A. No. 303 of 2009

VSN-II (CO)
SU(17/12/2021)