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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. 410 of 2009

Commissioner of Income Tax II
Madurai.

.. Appellant/Respondent

Vs.

M/s. Kajah Enterprises P Ltd
Successors of Rajah Company
20, Raja Street, T.Nagar
C/o. CNGSN & Associates
Chennai - 600 017.

.. Respondent/Appellant

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 05.09.2008 in ITA No.2162/Mds/2007 for the assessment year 2002-03.

Against the order of the Commissioner of Income Tax II, Madurai made in C.No.114/7/CIT-II/2006-07 dated 29.03.2007 against the Assistant Commissioner of Income tax, Circle I, Tirunelveli, made in PAN.No.AABFR1306D, dated 16.02.2005 for the Assessment Year 2002-03.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
Ms. Premalatha
Junior Standing Counsel

For Respondent : Mr. G.Baskar

J U D G M E N T

(Judgement of the court was delivered by R.Mahadevan, J.)

This tax case appeal at the instance of the Revenue, is directed against the order dated 05.09.2008, passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai in ITA



No.2162/Mds/2007 for the assessment year 2002-03.

2.By order dated 29.06.2009, the above tax case appeal was admitted on the following substantial questions of law:-

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"1.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 sec. 32(1) of the Income Tax Act ?

2.Whether in the facts and circumstances of the case, the Tribunal was right in holding that even though the introduction of explanation 1 to sec. 32 was not brought to the notice of this Court in the case of Hari Vignesh Motors and the appeal was dismissed as covered by the Supreme Court judgment in the case of Madras Auto Service for a year subsequent to the amendment, it would form a binding precedent ? "

3.According to the learned counsel for both sides, the issues raised in this appeal are squarely covered in favour of the Revenue by the judgment of this Court in the case of Commissioner of Income Tax, Madurai v. Viswams reported in [2019] 105 taxmann.com 289 (Madras), the relevant passage of which, is profitably reproduced hereunder:

"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.



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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 verandh, office room, side room and bath rooms



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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."



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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 Assesses 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 fact have been addressed and settled by the Authorities 28 Judgement dated 15 .04.2019 in T.C.A.Nos. 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. Following the above decision, which applies to the facts of the present case, the substantial questions of law raised in this appeal are answered in favour of the Revenue and against the assessee. Consequently, the order of the Tribunal dated 05.09.2008, is set aside and the appeal filed by the Revenue stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

- 1.The Commissioner of Income Tax
Madurai.
- 2.The Income Tax Appellate Tribunal 'B' Bench,
Chennai.
- 3.The Commissioner of Income Tax II,
Madurai.
- 4.The Assistant Commissioner of Income Tax,
Circle I, Tiruvelveli.

T.C.A. No. 410 of 2009

NMI (CO)
GN(20/01/2022)