

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No.315 of 2011 (O&M)

Date of decision: 24.03.2023

Commissioner of Income Tax-I, Ludhiana

...Appellant

Vs.

M/s Verdhman Textiles Ltd., Ludhiana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Vaibhav Gupta, Advocate,
for the appellant.

Ms. Radhika Suri, Senior Advocate,
with Mr. Ishan Aggarwal, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The instant appeal under Section 260A of the Income Tax Act, 1961, has been filed against the order dated 31.03.2011 passed by the Income Tax Appellate Tribunal, Chandigarh, whereby appeal filed by the assessee-M/s Verdhman Textiles Ltd. has been accepted and order dated 26.11.2010 passed by the Commissioner of Income Tax (Appeal), Ludhiana relating to the assessment year 2007-2008 has been set aside.

Brief facts of the case are that the assessee had filed its original return of income for the assessment year 2007-2008 on 31.10.2007 declaring total income of Rs.1,36,28,61,170/-. Later on, the assessee filed its revised return on 25.03.2009 declaring income of Rs.1,37,10,52,040/-. Assessment

under Section 143 (3) of the Income Tax Act was completed vide order dated

30.12.2009. However, the Assessing Officer, after recording the reasons for reopening the assessment under Section 147 of the Income Tax Act, issued notice to the assessee under Section 148 of the Act. During the course of reassessment proceedings, the reasons recorded for reopening were served upon the assessee. Vide letter dated 22.01.2010, the assessee raised objection alleging it to be a review of the earlier decision of the Assessing Officer. The second objection of the assessee was that there was no foundation for forming the belief and in the absence of such reasons, the Assessing Officer was devoid of any jurisdiction for reopening the assessment under Section 147/148 of the Act. The assessee had claimed an expenditure of Rs.6.01 crores as amount paid to Madhya Pradesh Electricity Board (MEPB) for the line/bay charges in Anant Spinning and Vardhman Yarn, Satlapur, both units located in Madhya Pradesh. The Assessing Officer was of the view that the expenditure incurred was for the creation of capital assets, which were to be used solely for business of the assessee and as the assessee could transfer such a right in case of transfer of assets, the said expenditure was held to be a capital expenditure and was disallowed and added back to the income of the assessee.

In appeal, the CIT (A) upheld the reopening of the assessment and opined that the claim of capital expenditure as Revenue expenditure, which had been allowed by the Assessing Officer, was the valid reason to reopen the assessment to bring to tax the capital expenditure allowed as Revenue expenditure. The CIT (A) observed that the Assessing Officer had reopened the assessment within a period of four years of the original assessment and hence, the same was upheld. The CIT (A) also upheld the

expenditure as the assessee's contention that ownership of the assets created vested with MPEB, was not supported by any evidence and even otherwise the assessee was having sole and exclusive rights over the aforesaid bay lines. A reference was made to Explanation I to Section 32 of the Act in connection with allowance of depreciation of capital expenditure incurred on leased building and following the said explanation, it was held by CIT(A) that even where there was no ownership of an asset, the assessee could be deemed to be owner of such assets for the purpose of allowing depreciation under certain circumstances. Against the said order passed by the CIT (A), the assessee filed an appeal before the Tribunal.

Before the Tribunal, one of the grounds taken by the assessee was that for the assessment year 1992-1993, the expenses paid to the Madhya Pradesh Electricity Board (MEPB) for the line/bay charges in Anant Spinning and Vardhman Yarn, Satlapur, were taken as capital expenses. The said plea was allowed by the CIT (A) and against the said order, no appeal was filed by the revenue. The assessee had further informed the Tribunal that similar expenditure was allowed for the assessment year 2004-2005. A notice under Section 148 of the Act was issued by the Assessing Officer on 06.01.2010 by referring to a judgment passed by this Court in **CIT vs. M/s Shreyans Industries Ltd.**, 303 ITR 393 (P&H), wherein it was held that such expenditure were to be treated as capital in nature. The aforesaid judgment passed by this Court was later on, set aside by Hon'ble the Supreme Court on 23.09.2008. In this backdrop, it was argued that notice under Section 148 of the Act was illegal and it could not have been issued after the delay. During the period under consideration, the assessee had claimed expenditure of Rs.6,01,69,818/- paid to MPEB on account of bay

lines. The said payment was solely out of commercial expediency with a motive of augmenting the business activity of the assessee company. The Assessing Officer, vide order dated 30.12.2009, while framing the assessment under Section 143 (3) of the Act, had allowed the claim of the assessee. However, the reason for reopening the assessment vide order dated 09.08.2010, is that this expenditure is capital in nature and the payment was taken to be as income, which had escaped the assessment.

The Tribunal further observed that for the assessment year 1992-1993, this payment made to Madhya Pradesh Electricity Board (MEPB) was allowed by the CIT (A) and against the said order, no appeal had been filed by the Revenue.

Even with respect to the assessment year 2004-2005, appeal of the assessee with respect to the similar claim was allowed. This income had been disclosed by the assessee while filing the return and even in respect of the past two assessment years, similar benefit had been allowed by treating the payment made to Madhya Pradesh Electricity Board (MEPB) for the line/bay charges in Anant Spinning and Vardhman Yarn, Satlapur, as revenue expenditure. It was not a case, where any information had been concealed by the assessee at the time of passing of the assessment order under Section 143 (3) of the Act. There was no fresh material pointed out by the Assessing Officer for reopening the assessment. The Tribunal further observed that there was no merit in the reasons recorded for reopening the assessment by the Assessing Officer by placing reliance on the ratio laid down by the Punjab and Haryana High Court in M/s Shreyance Industries Ltd's case (supra). It was further observed that the assessee had referred to the relevant

cost of extension of distribution made is to be paid by the consumer initially. However, the cost paid by the consumer shall be the property of the licensee. With these observations, appeal filed by the assessee was allowed.

Heard, learned counsel for the parties.

After going through the impugned judgment, this Court is of the view that the amount paid by the assessee to the Madhya Pradesh Electricity Board for bay lines has been rightly taken to be the **revenue expenditure**. Similar benefit had been extended to the assessee for the assessment year 1992-1993 and 2004-2005. This expenditure has been rightly claimed by the assessee as per the provisions of the Income Tax Act. There was no reason for re-opening and initiating proceedings under Section 147/148 of the Act. The Tribunal has rightly allowed the appeal of the assessee by appreciating the facts in the right perspective. Moreover, the Revenue has not led any evidence to show that any income had escaped assessment at the time of passing the assessment order. No substantial question of law arises for consideration in this appeal.

Resultantly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.03.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No