IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

T.C.(A)Nos.109 and 110 of 2015

M/s. Shivsu Canadian Clear International Ltd.
No.6-B-2, Parvakkam Road,
Leelavathy Nagar, Poonamallee
Chennai – 600 056.
PAN:AAICS2574C

… Appellant in both T.C.(A)s

v.

Deputy Commissioner of Income Tax
Company Circle – VI(2) Aaykar Bhavan,
121, Nungambakkam High Road,
Chennai – 600 034.

… Respondent in both T.C.(A)s

Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 08.09.2014 in ITA Nos.797 and 1688/Mds/2014 for Assessment Year 2008-09.

In both T.C.(A)s
For Appellant : Mr.S.P.Chidambaram

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

The assessee has filed these appeals relating to assessment year (AY) 2008-09, admitted on 09.03.2015 on the following common substantial question of law:

'Whether the expenditure incurred in respect of lease hold property is revenue expenditure or capital expenditure?

2. Briefly put, the facts are as follows:

The appellant had entered into a rental agreement with four individuals for taking on rent the property at 149 EVR Lane, Poonamallee High Road, Kilpauk, Chennai – 600 010 ('property'/'subject property'/'property in question'). The property comprises of land admeasuring 5000 sq.ft. with a superstructure of 9000 sq.ft.

3. Learned counsel for the appellant has taken us through the clauses in the rental agreement which is on record before the authorities,

pointing out that the lease was on a per annum basis at a figure of Rs.20/- per sq.ft., which was highly subsidised having regard to the area in which the property was located.

4. The appellant was permitted to make the building suitable for its use, by modifying the interiors by erecting partitions, installing suitable electrical fittings etc, making it clear that such modifications were to be cosmetic, such that the structural nature of the building was not affected. The deed provided that the modifications to the building would be left in the building when the appellant vacated the premises at the end of the lease period.

5. The appellant filed a Return of Income in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') on 25.09.2008 and an order of assessment under Section 143(3) had been passed on 19.12.2010 disallowing the expenses under Section 40(a)(ia) of the Act. Notice under Section 148 of the Act was issued on 26.03.2012 for reopening of the assessment.

6. The appellant had filed a letter dated 27.11.2012 stating that the return of income filed originally may be taken as filed in compliance with

notice under Section 148 and seeking the reasons for reopening of the assessment. The reasons dated 08.01.2013 were supplied, as per which, the Assessing Authority sought for an explanation as to why the claim of depreciation was to be allowed.

7. The Assessing Authority was of the view that the incurrence of expenditure on buildings was capital in nature and hence only depreciation would be allowed and not the entirety of the expenditure itself. The appellant filed objections to the assumption of jurisdiction and ultimately proceedings culminated in order of reassessment dated 31.01.2013.

8. The claim of expenditure of a sum of Rs.1,17,51,058/- incurred by the appellant in connection with the subject property was discussed and the officer was of the view that the expenditure was capital in nature, liable to be disallowed, invoking the Explanation (1) to Section 32 (1)(ii) of the Act.

9. The appellant objected, stating that the expenditure was only in relation to temporary modifications and would hence be revenue in nature overriding which an order of re-assessment was passed under the provisions of the Act on 31.01.2013.

10. In first appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) partly accepted the appellants' submission that the nature of the works executed in the property was revenue in nature, vide order dated 16.12.2013. Out of a total sum of Rs.1,17,51,058/-, he disallowed the expenditure relating to re-construction of compound wall, installation of camera and electrical fittings, holding the same to be capital in nature.

11. Inter alia, the appellate authority relies on the decisions of this Court in *Thiru Arooran Sugars Limited V. Dy. CIT*[1] and *CIT V. Ayesha Hospitals Pvt. Ltd.*[2], being of the view that the expenses incurred were required for maintaining of the leased premises and ensuring the functionality of the business of the appellant.

12. Aggrieved, both the assessee as well as the Revenue filed appeals before the Income Tax Appellate Tribunal (in short 'ITAT'/'Tribunal'), the Revenue challenging the allowance of expenditure as revenue in nature and the assessee challenging the disallowance of part of the expenditure incurred.

13. The Tribunal, vide common order dated 08.09.2014 has proceeded to reverse the order of the CIT(A) accepting the appeal filed by

1 350 ITR 324
2 292 ITR 266

the revenue and rejecting the assessee's appeal, being of the view that the alterations made to the property were substantial and must be taken cumulatively.

14. The Tribunal opines that if the alterations were taken piece meal, they would be revenue in nature. However, since the alteration of the building impacted the building as a whole, it is the overall impact that must be taken into account. According to the Tribunal, the effect of the expenses was to convert an *'old unusable building into a new usable building'*, and hence the claim would have to be treated as capital and enduring. Aggrieved with the aforesaid conclusion, the assessee is before us with these appeals.

15. We have heard Mr.S.P.Chidambaram, learned counsel for the assessee/appellant and Mr.J.Narayanasamy, learned Senior Standing Counsel for the Income Tax Department.

16. The expenses have been categorised by the CIT(A) at internal page 9 of order dated 16.12.2013 as follows:

Details of expenses incurred by Shivsu Canadian Clear International ltd.		
For A.Y. 2008-09		
Sl.No.	Nature of expenses	Amount

1	Carpentry Work	3,650,954
2	Electrical Wiring	1,642,690
3	Camera	130,252
4	Tile work	676,214
5	Painting	1,659,073
6	AMC	114,600
7	False Ceiling work	1,272,120
8	Wall work	1,450,000
9	Pest control	55,292
10	Others	1,099,864
	Total	11,751,058

17. There above tabulation is accepted as proper by both parties. We have no doubt that the incurrence of the expenses at serial numbers 1 to 9 are necessary in order to render the building functional for the purposes of the assessee's business. Their recurring nature is also not in doubt insofar as Carpentry, electrical work, painting, false ceiling, repair and maintenance of the walls, pest control, installation of camera and execution of annual maintenance contracts, are works that are routinely carried out in business premises as and when required, to keep the premises in proper shape for the conduct of business.

18. As far as Item No.10 is concerned, parties concur on the position that they are only miscellaneous expenses. The Tribunal has rejected the claim of the assessee opining that the '*simultaneous*

incurrence' of the expenditure would result in re-construction of the old building. To this end, the Tribunal has rendered a finding at paragraph 9 of its order as follows:

> *…… The expenses incurred for partitions, painting, tile work, false ceiling, wall work etc. were not to be considered severally as if to say that individually speaking those expenditure could be revenue in nature.*

19. The tribunal thus goes on to adopt the cumulative impact of the repair and maintenance work as the relevant parameter, which, in our view, would not be a proper approach. The question of re-construction does not arise and in fact, it is nobody's case that the building has been re-constructed. The rental agreement clearly states that there would be no structural modification to the subject property.

20. Hence, the finding of the Tribunal to the effect that the individual repair/maintenance works would amount to re-construction of the old building, are, in our view, perverse and not borne out of the materials available on regard.

21. Though the Tribunal has not referred to Explanation (1) to Section 32(1)(ii) of the Act, the assessing officer has made reference to the Explanation and Mr.Narayanasamy has also drawn our attention to the

same. In our considered view, Explanation does not, in any way, militate against the claim of the appellant and reliance upon the same by the Department does not advance its case in any way.

22. Section 32 provides for grant of depreciation, and Explanation (1), which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 01.04.1988 reads thus:

> ***32. Depreciation*** –
>
> . . . .
>
> *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.*

23. The purport of the Explanation is laudable and enables even a lessee of a building to seek grant of depreciation, despite the premises being leasehold in nature. However, the attempt of the revenue is to interpret Explanation (1) such that, when an assessee is deemed to be the

owner of the leasehold premises, all expenses incurred by that assessee would be taken to be capital in nature.

24. We do not agree with such an interpretation as it does not reflect the true purport of Explanation (1) and in fact, runs counter to its avowed intention. Further, there is nothing in the Explanation to lead one to such an interpretation. The Explanation is intended to enable a lessee in leasehold premises to claim depreciation on capital assets, despite his status as a lessee and not as owner. This would not stand in the way of the lessee claiming the expenditure as revenue, if the lessee is otherwise able to establish the nature of the expenditure incurred.

25. We find support in the above view from the decision of the Full Bench of the Kerala High Court in *Indus Motors Co. (P) Ltd. V. Deputy Commissioner of Income-tax, Circle-1(1)*[3]. In that case, the Full Bench was dealing with a reference as to whether the incurrence of expenditure for construction of a super structure (workshop) on leasehold land would be capital or revenue expenditure.

26. The Bench notes that the reference itself proceeds as though Explanation (1) to Section 32(1) manifests a legislative intention to treat

3 382 ITR 503

the expenses incurred by an assessee on leasehold building as capital expenditure. Negating that interpretation, at paragraph 29, they state as follows:

> *29. …… Had the legislature intended to provide that all such expenditure incurred by the assessee as referred to in Explanation 1 shall be treated as capital expenditure, the explanation would have used different phraseology. It is well settled principle of statutory interpretation that language of the statute should be read as it is. Thus the Explanation 1 has to be read as it is.*

27. Referring to the judgments of the Supreme Court in *CIT V. Tara Agencies*[4], *Union of India V. Deoki Nandan Aggarwal*[5], *State of Kerala V. Mathai Verghese*[6], *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. V. Custodian of Vested Forests*[7] and the House of Lords in *Pinner V. Everett*[8] the Bench concludes that the Legislative intention must be gleamed from the apparent language in which the provision is couched, after ascertaining the true purport of the provision and the object and spirit of the same.

28. Thus, they conclude that having regard to the true purport of Explanation (1), whether a particular item of expenditure is capital or

4 292 ITR 444
5 1992 Supp (1) SCC 323
6 (1986) 4 SCC 746
7 1990 Supp SCC 785
8 (1969) 1 WLR 1266

revenue is to be found based on the facts of each case and the settled decisions in this regard.

29. The above decision of the Full Bench of the Kerala High Court has been applied by the Division Bench in the case of that very assessee, in a decision reported as *Indus Motors Co. (P) Ltd. V. Deputy Commissioner of Income-tax, Circle-1(1)*[9]. As against the decision of the Division Bench, the revenue has filed a Special Leave Petition before the Supreme Court which has been admitted, as reported in *Deputy Commissioner of Income-tax V. Indus Motor Co. (P) Ltd.*[10].

30. The position as on date thus, is that the object and purpose of Explanation (1) is to facilitate even a lessee of leasehold property to seek and obtain depreciation which is normally available only to the owner of a property. There is nothing in Explanation 1 to suggest that it was intended to deny a legitimate claim of a lessee for grant of revenue expenditure, should that assessee be in a position to establish such claim. Thus, if the argument of the revenue was to be accepted, it would distort the purpose and object for which Explanation (1) has been inserted.

9 88 taxmann.com 229
10 96 taxmann.com 220

31. Learned counsel for the revenue has cited the decisions of this Court in *CIT V. Madura Coats*[11] and *CIT V. ETA Travel Agency (P) Ltd.*[12] in support of his contention. This Court in the case of *Madura Coats* (supra), has stated at paragraph 15 of the judgment that the repairs are major in nature. There is also no indication that the expenses were recurring. Hence, that case is distinguishable.

32. In the case of *ETA Travel Agency (P) Ltd.* (supra) too, the expenditure was incurred for interior decoration, such as fixing of doors, collapsible shutters, mirrors, partitions, false ceiling and provision for furniture. The Bench has applied the decision of the Punjab and Haryana High Court in *Silver Screen Enterprises V.CIT* ((1975)85 ITR 578), wherein the Punjab and Haryana High Court was considering the expenditure on construction of verandah, office room, side room and bathrooms.

33. The decision of the Kerala High Court in *Indus Motors Co. (P) Ltd.* (supra) was brought to the notice of the Bench. However, upon consideration of all the decisions, the Bench was of the view that the

11 19 taxmann.com 74
12 109 taxmann.com 66

expenditure incurred on interior decoration was more in the nature of capital expenditure.

34. The items of expenditure that we have dealt with in the present case are different and distinguishable from those dealt with by the Court in *ETA Travel Agency (P) Ltd.* (supra). There is also nothing on record to indicate that the recurring nature or otherwise of the expenditure was considered by the Bench in that matter. Hence, both the aforesaid decisions, i.e., *Madura Coats* (supra) and *ETA Travel Agency (P) Ltd.* (supra) are specific to items of work that are different from those in the present matter and are distinguishable.

35. In light of the discussion as above, the substantial question of law is answered in favour of the assessee and against the Revenue. These Tax Case (Appeals) are allowed. No costs.

[A.S.M., J] **[G.A.M., J]**

11.12.2024

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Index:Yes
Neutral Citation:Yes
Speaking order

To

1. The Income Tax Appellate Tribunal, Madras 'A' Bench,

2. Deputy Commissioner of Income Tax
   Company Circle – VI(2) Aaykar Bhavan,
   121, Nungambakkam High Road,
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