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T.C.A.No.237 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

Tax Case Appeal No.237 of 2015

M/s.Sabare International Ltd
SF No.6/1, Nedungur
Karudaiyampalayam (PO)
K.Paramathi, Karur 639 111
PAN AAICS4261N

... Appellant

Vs.

The Deputy Commissioner
of Income Tax, Company Circle I
Tiruchirapalli.

... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961
against the order dated 12.12.2012 passed by the Income Tax Appellate
Tribunal 'B'Bench in ITA No.655/Mds/2012.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel



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J U D G M E N T

(Delivered by R.SURESH KUMAR, J.)

In respect of a sum of Rs.2,38,89,114/- for the Assessment Year 2007-08, since that expenditure had been shown in the books of accounts by the assessee as capitalized expenditure, the assessing officer under the assessment order, has allowed those expenditure as capital expenditure and not as revenue expenditure, and therefore 1/5th can be claimed in the concerned year and subsequently it will spread over to the next four years. That was questioned by the assessee before the Commissioner of Income Tax (Appeals), where also, the order passed by the assessing authority was confirmed, against which when the assessee approached the Income Tax Appellate Tribunal (ITAT), the learned Tribunal, in Paragraphs 4, 5 and 6 has passed the following orders:

" 4. The assessee has claimed a sum of Rs.2,38,89,114/- as deduction by way of revenue expenditure incurred in the context of the capacity expansion of the manufacturing unit of the assessee. In the books of account, the assessee has capitalized the expenditure. The claim was made only in the computation of income under the Income Tax Act. The Assessing Officer treated the amount as preliminary expenses and applied Section 35D of the Act. Accordingly, one-fifth of the expenses has been allowed in the impugned assessment



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year. The claim of the assessee is that the entire amount should be treated as revenue expenditure entitled for deduction.

5. We considered the matter. The details of the concerned expenses are available at Page 2 of the assessment order. On a detailed consideration, we find that the following expenses have to be treated as revenue expenditure incurred in the course of carrying on of the business of the assessee in the previous year relevant to the assessment year under appeal:-

(i) Salary	...	Rs.18,10,590/-
(ii) Provident Fund	...	Rs. 61,885/-
(iii) Staff Welfare expenses	...	Rs. 3,86,502/-
(iv) Electricity Charges	...	Rs.15,94,306/-
(v) Travelling expenses	...	Rs. 5,75,519/-
(vi) Water Charges	...	Rs.5,94,535/-
(vii)Vehicle maintenance	...	Rs.6,04,836/-
(viii) Other maintenance	...	Rs. 68,815/-

		Rs.56,96,988/-

The above expenses, totaling to Rs.56,96,988/- shall be allowed as deduction in computing the income of the assessee.

6. The following expenses are confirmed as coming under Section 35D of the Act:-



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(i) Professional and Consultancy charges :	Rs.83,44,186/-
(ii) Foreign Travel :	Rs.17,31,970/-
(iii) Building portion of STP ..	Rs.24,72,739/-
(iv) Lab and Quality expenses ..	Rs.12,62,700/-
iv) Landscaping ..	Rs.42,43,500/-
v) Others ..	Rs. 1,37,031/-

Total ..	Rs.1,81,92,126/-

2. Even though the assessee has capitalized the entire expenditure of Rs.2,38,89,114/-, based on the headings under which those expenses have been made, the Tribunal came to the conclusion that certain expenditure like salary, provident fund, staff welfare expenses, electricity charges, vehicle maintenance, water charges, travelling expenses etc., can be treated as revenue expenditure to the extent of Rs.56,96,988/-.

3. Insofar as the other expenditure under the headings like professional and consultancy charges, foreign travel, building portion of STP, lab and quality expenses, Landscaping etc., to the sum of Rs.1,81,92,126/- had been taken only as a capital expenditure. Therefore, the invocation of Section 35D by the assessing officer insofar as this expenditure is concerned are to be approved. Therefore, to that extent, the order passed by the C.I.T (Appeals) has been modified by the Tribunal, which is impugned herein.



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4. We have gone through the order passed by the Assessing Officer, CIT (Appeals) as well as the Income Tax Appellate Tribunal. Heard Mr.R.Sivaraman learned counsel for the appellant and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondent.

5. Since the appellant assessee itself has booked it as a capital expenditure, where, at least to the extent of Rs.56,96,988/- have been culled out by the Tribunal because of the nature of the expenses as revenue expenditure, to that extent the relief granted by the Tribunal has to be accepted. Insofar as the remaining expenditure is concerned, the assessee / appellant cannot claim it as a revenue expenditure because the assessee itself has booked it as a capital expenditure. When that being so, we do not find any error in the order passed by the Tribunal. Therefore, the questions of law raised in this appeal is answered in favour of the Revenue and against the appellant / assessee. Resultantly, the appeal fails and it is dismissed. No costs.

(R.S.K.,J.) (C.S.N.,J.)
27.08.2024

NCS : Yes/No
Index : Yes/No
KST

To



T.C.A.No.237 of 2015

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

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R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

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