Court No. - 35
Case :- INCOME TAX APPEAL No. - 388 of 2008
Appellant :- U.P. Hotels Limited Through Director Apoorva Kumar
Respondent :- The Commissioner Of Income Tax
Counsel for Appellant :- S.K. Garg,Ashish Bansal
Counsel for Respondent :- C.S.C.
Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Sri Ashish Bansal learned counsel for the appellant assessee and Sri Subham Agarwal learned counsel for the department. This is assessee's appeal for the assessment year 1995-96 against the order passed by the tribunal dated 22.11.2007.

The following questions of law sought to be answered are as under:

"1. Whether there existed any material which could justify the findings of the tribunal to the effect that the expenditure aggregating Rs.60,09,212/- incurred under various heads was of capital in nature and was not admissible as business expenditure?

2. Whether the tribunal was legally correct in reversing the order of the first appellate authority in the matter of admissibility of sums aggregating Rs.60,09,212/- as revenue expenditure, without there being any material contrary to the findings recorded by the first appellate authority brought on record by the revenue?

3. Whether the view taken by the tribunal is not vitiated as being inconsistent with the material and information on record and law applicable thereto?

4. Whether the order of the tribunal disallowing the assessee's claim for deduction of expenditure amounting to Rs.60,09,212/- is not vitiated in law by the reason of non-consideration of relevant material and information as was available on record?

5. Whether on a true and correct interpretation of the provisions of law, governing the computation of income under the head income from business and profession, the tribunal was legally correct in disallowing the assessee's claim for deduction of expenditure aggregating Rs.60,09,212/-as had been incurred by the assessee under various heads?

6. Whether the view taken by the ITAT in the matter of admissibility of expenditure aggregating Rs.60,09,212/- is not vitiated in law as the same is based purely on imagination, surmises and conjectures, without there being any foundational support for the same?"

Learned counsel for the assessee has sought to argue that regardless of what the amount may have been the amount spent by the assessee on the repairs, replacement and renovation of his hotel rooms in one unit and construction and reconstruction in the other units at

Agra and Lucknow respectively, the same could not be termed as capital expenditure rather they were amounts which were spent in the day today running of the business of the assessee and only qualify as revenue expenses.

Learned counsel for the assessee relies on a short discussion made by the CIT (Appeal) who says that the replacement of a bath tub in hotel is in nature of the repairs. What the CIT ignores completely is that two old floors of the hotel received renovation in the bath rooms which included the replacement of old fittings into new fittings which has the effect of upgrading the hotel and such an upgradation would definitely not qualify as current repairs or running repairs.

The very nature of expenditure does not suggest that the expenses made by the assessee were in the nature of the usual kind of running repairs or current repairs. It was not the mere replacement of a single faucet or a tube but the entire systems and fittings in the bath rooms were changed,

The tribunal records a finding that by making such expenditure, the assessee had renovated and refurnished its hotel which enhanced the standard of the hotel and in return also added an advantage of an enduring nature which would be reflected in terms of the higher rental and higher occupancy in the hotel.

The tribunal therefore rightly concludes that when expenditure of this kind creates an advantage of an enduring nature, it can only be considered as capital expenditure and therefore could not be covered under the general provisions of expenditure allowable under section 37 of the Income Tax Act. The order of the CIT (Appeal) was therefore set aside and that of the A.O. was restored.

Having heard learned counsel for both sides and having perused the material on record as well as having examined the law in this regard that is to say the decision of the Apex Court in the case of **CIT versus Sri Mangayarkarasi Mills (P) Ltd. reported in (2009) 224 CTR reports 513 (SC)** and in regard to the contents of para 15 and 17 of the said decision, which are quoted hereinbelow, we are of the firm view that the expenditure made by the assessee in its hotel was of the capital nature and not of the revenue nature.

"15. Moving on to the issue of `current repairs' under section 31 of the

Act, the decision of this Court in CIT v. Saravana Spinning Mills (P) Ltd. (supra) is again relevant. This court has laid down that in order to determine whether a particular expenditure amounts to `current repairs' the test is "whether the expenditure is incurred to `preserve and maintain' an already existing asset and not to bring a new asset into existence or to obtain a new advantage. For `current repairs' determination, whether expenditure is revenue or capital is not the proper test." It is our opinion that the entire textile mill machinery cannot be regarded as a single asset, replacement of parts of which can be considered to be for mere purpose of `preserving or maintaining' this asset. All machines put together constitute the production process and each separate machine is an independent entity. Replacement of such an old machine with a new one would constitute the bringing into existence of a new asset in place of the old one and not repair of the old and existing machine. Also, a new asset in a textile mill is not only for temporary use. Rather it gives the purchaser an enduring benefit of better and more efficient production over a period of time. Thus, replacement of assets as in the instant case cannot amount to `current repairs'. The decision in Saravana Mills (supra) case clearly mentions that replacement of a derelict ring frame by a new one does not amount to `current repairs'. Further in Ballimal Naval Kishore (supra) this Court has held that a new asset or new/different advantage cannot amount to `current repairs', which has been subsequently approved in the Saravana Mills (supra) case. For these reasons, the expenditure made by the assessee cannot be allowed as a deduction under section 31 of the Act. The judgment of this Court in the Saravana Mills (supra) case mentions two exceptions in which replacement could amount to current repairs, namely:

"Where old parts are not available in the market (as seen in the case of CIT v. Mahalakshmi Textile Mills Ltd.(AIR 1968 SC 101), or
Where old parts have worked for 50-60 years."

In the instant case, the assessee has not claimed any of the above stated exceptions. The Saravana Mills (supra) case also restricts the scope of `current repairs' to repairs made to machinery, plant and/or furniture. In this case, replacement of machine can at best amount to a repair made to the process of manufacture of yarn. Further this court has also observed in Saravana Mills (supra) case that if replacement was held to be `current repair' in such cases, section 31(i) will be completely redundant and absurdity will creep in because repair implies existence of a part of the machine which has malfunctioned, which is impossible in the case of such replacement. Thus, this replacement expenditure cannot be said to be `current repairs' after the decision in the Saravana Mills (supra) case.

17. We are of the opinion that the expenditure of the assessee in this case is capital in nature and there is sufficient judicial precedent to support this view. In the case of Travancore Cochin Chemicals Ltd. V. CIT ((1997) 2 SCC 20) this Court held that expenditure is of a capital nature when it amounts to an enduring advantage for the business and repair is different from bringing a new asset for the business. Further, in Lakshmiji Sugar Mills (P) Co. v. CIT (AIR 1972 SC 159) it has been held by this Court that bringing into existence a new asset or an enduring benefit for the assessee amounts to capital expenditure. We have already explained why replacement, in this case, amounts to bringing into existence a new asset and also an enduring benefit for the assessee. It is clear then that expenditure of the assessee here is not of a revenue nature and thus, cannot be claimed as a deduction under section 37 of the Act."

The questions referred to above are therefore answered in favour of the department and against the assessee.

The appeal is thus dismissed. No costs.

Order Date :- 14.12.2016
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