

(5394)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

T.C.(A). No.2173 of 2006

M/s.Chamundi Steel Rolling Mills

Purohit Complex

145, Mint Street (II Floor)

Chennai-600 079

... Appellant

-vs-

The Assistant Commissioner of

Income Tax, City Circle III(1)

Chennai-600 006

... Respondent

Tax Case (Appeal) against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 1st September 2005 in ITA.No.1557/Mds/1999.

For Appellant : Dr.Anita Sumanth

**For Respondent : Mr.J.Narayanaswamy,
Standing Counsel for IT Dept**

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN ,J)

The assessee is on appeal as against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 1st September 2005 in ITA.No.1557/Mds/1999 relating to the assessment year 1992-93 raising the following question of law:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in non considering and in rejecting the appellant's claim that the expenditure on iron rolls is revenue in nature and hence allowable in full ?"

2. The assessee herein is engaged in manufacturing steel re-rolls. In the course of assessment proceedings, the assessee claimed that the iron rolls acquired and put to use were entitled to be granted 100% depreciation. The Assessing Officer pointed out that the machines were purchased after 17.10.1991 and they were put to use for less than one hundred and eighty days. Thus, the assessee was entitled to depreciation to 50% only.

3. The assessee filed revised return thereupon and requested that the cost of the iron rolls could be allowed as revenue expenditure. In the course of the assessment, the Assessing Officer enquired the Managing Partner, who affirmed that without rolls, the machines would not work, hence, they were part and parcel of the fixed assets. Apprised of the use of those rolls in the business and the treatment under law, 100% depreciation would be available only if the machines functioned beyond 180 days. The Managing Partner was stated to have agreed as under:-

" We have no objection to treat iron rolls as 100% depreciable assets and withdraw the revised statement of total income for income tax purposes for the assessment year 1992-93 dt 'nil' filed by my auditor."

In the background of the concession thus given by the assessee, the Assessing Officer granted depreciation at 50%.

4. As against the same, the assessee filed appeal before the Commissioner of Income Tax (Appeals) and contended that the iron rolls purchased were entitled to deduction as revenue expenditure. In all earlier years, the claim of the assessee was allowed only as revenue expenditure, consequently, there were no fresh facts to treat it as capital one. The assessee further contended that during the process of production, the rolls, which were used to avoid friction in the machinery, suffered damage and thus necessitated frequent replacement in the mill. Thus, the assessee claimed that the expenditure was under the "revenue" or it to be treated as "current repairs". He further pointed out that there was no increase in the capacity of production, it was only replacement of worn out of a part of the machine. The Appellate Authority, however, rejected the assessee's contention and affirmed the view of the Assessing Officer of granting 50% of the depreciation. Aggrieved by this, the assessee went before the Income Tax Appellate Tribunal.

5. Reiterating its stand, the expenditure on replacement of iron roll is only as revenue expenditure, the assessee contended that the reasoning of the Commissioner of Income Tax (Appeals) was not sustainable in law.

Pointing out to the iron rolls used at high temperature of 1200o C, the assessee pointed out that the life span of these rolls had to be taken into account while considering the claim.

6. The Income Tax Appellate Tribunal, however, pointed out that the Managing Partner of the assessee firm viz., Shri Mahindra Kumar Gupta gave in writing during the assessment proceedings that the assessee had no objection to treat iron rolls as 100% depreciable assets and withdraw the revised statement of total income for income tax purposes for the assessment year 1992-93, wherein, the claim was made as revenue expenditure. In the context of the said fact given by the assessee, the appeal filed by the assessee was rejected. Aggrieved by the same, the assessee is before this Court with the present tax case appeal.

7. Learned counsel for the assessee pointed out that while the assessee made a consistent case that the expenditure was only revenue expenditure, given the nature of the steel rolls use and the circumstances under which frequent replacement was to be made, the authorities below committed serious error by solely relying on the statement given by the Managing Partner. It is further pointed out that the concession made by the Managing Partner could not be deciding factor as regards the nature of replacement and use of steel rolls. She submitted that the view of the Income Tax Appellate Tribunal based on the statement extracted from the Managing Partner, per se, could not decide on the character of the expenditure, consequently, the claim has to be looked at from the angle of the need of incurring such expenditure. She further pointed out that the process of the manufacturing involved in the assessee's operation were explained to the Tribunal. She pointed out that iron ingots are pushed by a pushing machine into a reheating furnace, where they are heated to temperatures of upto 1200o C and the steel rollers produced the friction in the process of rolling between the hot iron and steel rollers. In this process, the rollers suffered serious damage necessitating replacement within short span of time. Thus, learned counsel submitted that when such an argument was placed before the Income Tax Appellate Tribunal, the

reliance placed on by the Tribunal on the statement of the Managing Partner is not justified.

8. In this connection, learned counsel for the assessee placed reliance on the decision of the Apex Court in the case of Commissioner of Income-Tax Vs. Saravana Spinning Mills P.Ltd reported in (2007) 293 ITR 201 (SC), wherein, the Supreme Court pointed out that the claim for current repairs does not contemplate the expenditure incurred in replacement of a part of machinery. Referring to Section 31(i) of the Income-Tax Act, 1961 (hereinafter called as the "Act"), in considering the claim under current repairs, even if the expenditure is revenue in nature, the same may not fall within the meaning of "current repairs". Therefore, the question as to whether the expenditure incurred by the assessee conceptually is revenue or capital in nature is not relevant for deciding the question whether such expenditure comes within the etymological meaning of the expression "current repairs". The Apex Court further pointed out that under Section 37 of the Income Tax Act, a particular item of expenditure may be deductible if the expenditure does not fall within Sections 30 to 36 of the Act. Whether expenditure is "revenue" or "capital in nature" would depend upon several factors, namely, nature of the expenditure, nature of business activity etc. In the decision in the case of Commissioner of Income Tax, Madurai Vs. Sri Mangayarkarasi Mills Private Limited reported in 315 ITR 114, the Apex Court, once again pointed out that the replacement of old machinery with new machinery, would not amount to current repairs. The replacement of the old machine part with new one bringing into existence a new asset giving enduring benefit is expenditure, which is capital in nature. In the case of Commissioner of Income Tax Vs. Ramaraju Surgical Cotton Mills reported in (2007) 294 ITR 328 (SC), the Supreme Court considered the decision in the case of CIT Vs. Saravana Spinning Mills P.Ltd reported in (2007) 293 ITR 201 (SC) and in the case of CIT Vs. Janakiram Mills Ltd reported in (2005) 275 ITR 403 and pointed out that in considering whether the expenditure is revenue or capital in nature, the proven tests have been evolved that if the expenditure is of the nature not leading to the increased production capacity and the same remaining as constant, even after replacement, then, the expenditure would be revenue in nature. To consider whether the replacement resulted in increased production or not,

the Apex Court remanded the matter to the Commissioner of Income Tax (Appeals).

9. When we look at the facts of the case herein, as the assessment appealed rests on the statement of the Managing Partner by withdrawing the revised statement on total income, wherein, the assessee claimed the expenditure as revenue expenditure, as pointed out in the decision referred to above, the claim of the assessee on the expenditure as revenue or capital has to be looked at from the angle of the nature of business activity and the necessity of the expenditure incurred and the nature of the machinery, which is sought to be replaced or repaired and its impact on the produce.

10. It is seen from the facts that the assessee does not claim its expenditure as replacement of whole machinery or repairing of machinery as such. The assessee contended that such expenditure incurred in replacing the rolls has not in any manner increased the production capacity. On the other hand, it maintained the production capacity, as such, the rolls used removed the friction between the two machines in its process.

11. A reading of the order of the Income Tax Appellate Tribunal shows that it has not considered the nature of expenditure incurred by the assessee and the need for incurring such expenditure. On the other hand, the Income Tax Appellate Tribunal adverted to the statement of the Managing Partner and held that the assessee had no objection to treat the rolls as depreciable assets.

12. When a specific question was raised before the Income Tax Appellate Tribunal as regards the nature of expenditure, the Tribunal should have adverted to the issues raised viz., to consider whether the expenditure was, in fact, a "revenue" or "capital expenditure".

13. Given the technicalities on the "revenue" and "capital expenditure", "current repairs" and its application to a finding based on facts, we feel that the Assessing Officer should have adverted to the various facts involved in the use of steel rolls to arrive at the decision as to whether the assessee is entitled to deduction under Section 37 of the Act or not. When the authorities below had not adverted to any of these, we feel, the proper course herein would be to set aside the order of the Income Tax Appellate Tribunal. Accordingly, the order of the Income Tax Appellate Tribunal is set aside and the matter is restored to the files of the Assessing Officer to consider the claim of the assessee in the background of the nature of the expenditure incurred by the assessee and to the decisions of the Apex Court as referred to above and thereafter arrive at a finding.

14. In the result, the Tax Case Appeal stands disposed of with the above observation. No costs.

(C.V.,J.) (K.R.C.B.,J.)

01.10.2012

Index:Yes

Internet:Yes

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To

1. The Assistant Commissioner of

Income Tax, City Circle III(1)

Chennai-600 006

2.The Commissioner of Income Tax (Appeals) -V, Chennai

3.The Income Tax Appellate Tribunal, Bench A, Chennai

CHITRA VENKATARAMAN, J.

and

K.RAVICHANDRABAABU, J.