IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 21ST DAY OF AUGUST 2012/30TH SRAVANA 1934

I.T.A.No.130 of 2002

[AGAINST THE ORDER IN I.T.A.NO.226(COCH)/94 DATED 19.6.2001
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN]
(ASSESSMENT YEAR 1991-92)

APPELLANT/APPELLANT:-

THE COMMISSIONER OF INCOME TAX,
COIMBATORE.

BY SENIOR ADVOCATE SRI.P.K.R.MENON,
SENIOR COUNSEL FOR GOVERNMENT OF INDIA (TAXES) &
SRI.JOSE JOSEPH, STANDING COUNSEL FOR GOI (TAXES).

RESPONDENT/RESPONDENT:-

M/S.MADRAS SPINNERS LTD.,
COIMBATORE.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 21-08-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

Thottathil B.Radhakrishnan &
K.Vinod Chandran, JJ.

I.T.A.No.130 of 2002

Dated this, the 21st day of August, 2012

JUDGMENT

K.Vinod Chandran,J:

The assessee, a Company engaged in the business of manufacture and sale of yarn, for the assessment year 1991-92,claimed an amount of Rs.1,38,27,772/- as revenue expenditure towards replacement of machinery. The Assessing Officer conducted a survey under Section 133A of the Income Tax Act, 1961, hereinafter referred to as “the Act”, and found that the assessee had replaced a machinery called the “Cone Winder” by an “Auto Coner 238”. The replacement of such machinery was in addition to the existing plant and machinery and the claim of revenue expenditure was rejected on the premise that the same was capital in nature.

2. The assessee successfully challenged the order of the Assessing Officer before the first appellate authority. The first appellate authority relied on a decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax v. Mahalakshmi Textile Mills Ltd.*** (1965) 56 ITR 256, to hold that the expenditure incurred by the assessee on modernization by replacing old worn out machinery with new machines could only be treated as a revenue expenditure. The

Tribunal, on an appeal by the Revenue, confirmed the findings of the first appellate authority.

3. The Revenue is in appeal before us, raising the following questions of law:

i) Whether, on the facts and in the circumstances of the case the expenditure incurred by the assessee for replacement of the machinery (cone winder by auto coner) would amount to capital expenditure?

ii) Whether, on the facts and in the circumstances of the case in the light of the finding of the Tribunal that "the advantage of automatic cone winder is that it can run at a very high speed and it can reduce the man power requirement substantially by replacing the work done by engaging labour with machines" and other findings whether is not the expenditure capital in nature?

iii) Whether, on the facts and in the circumstances of the case will not an expenditure which reduces revenue expenditure recurring or otherwise amount to capital expenditure?

4. ***Mahalakshmi Textile Mills case*** (*supra*) was a case in which parts of the textile machinery owned by the assessee had become worn out and replacement was impossible since the old type

parts were not available in the market. The assessee, hence, replaced the worn out parts with new parts manufactured by another manufacturer; thus modifying the machinery to a new system. In the instant case, the Tribunal has clearly found that the new machinery was one which reduced the man power requirement substantially and increased production. The facts are clearly distinguishable.

5. The issue, in the case of a textile mill itself, was considered by the Hon'ble Supreme Court in ***CIT v. Sri Mangayarkarasi Mills P. Ltd***., (2009) 315 ITR 114 (SC). The Hon'ble Supreme Court considered the words “current repairs” and held that the entire textile mill machinery for spinning yarn cannot be regarded as a single asset and each separate machinery was held to be an independent entity, though all machines put together constitute the production process. Replacement of 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 existing machine, as held by the Hon'ble Supreme Court. The asset gives the purchaser (assessee) an enduring benefit of better and more efficient production over a period of time. Such replacement of assets was held to be not amounting to “current repairs”. We are of the opinion that the said decision squarely applies to the facts of the instant case. We respectfully follow the

judgment of the Hon'ble Supreme Court in ***Sri Mangayarkarasi Mills case*** (*supra*) and answer the questions of law framed by the Revenue in favour of the Revenue and against the assessee. The orders of the Tribunal and the first appellate authority are set aside and the order of the Assessing Officer is restored to the extent it deals with the above issue.

The appeal is ordered accordingly.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
K.Vinod Chandran
Judge.

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