

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2012

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The Honourable Mrs.Justice CHITRA VENKATARAMAN  
and  
The Honourable Mr.Justice K.RAVICHANDRA BAABU

TC(A). Nos. 1246 and 1247 of 2005

The Commissioner of Income Tax  
Madurai ... Appellant

-vs-

The Metal Powder Company Limited  
Maravankulam  
Tirumangalam 625 706 ... Respondent

Tax Case Appeals against the order of the Income Tax Appellate Tribunal, B Bench,  
Chennai, dated 9.3.2005 passed in I.T.A.Nos.1529 and 1621/ Mds/1997 for assessment year  
1994-95.

For Appellant : Mr.T.Ravikumar  
Standing Counsel for Income Tax

For Respondent : No appearance

JUDGMENT

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

The Revenue has preferred the appeals as against the order of the Income Tax  
Appellate Tribunal relating to assessment year 1994-95. The above Tax Case (Appeals) was  
admitted on the following substantial questions of law:-

"(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that  
conversion charges and sundry sales does not form part of the turnover, for the purpose of  
calculation of deduction under Section 80HHC?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of independent machinery as revenue expenditure?

(iii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the profit margin of goods captively consumed is to be excluded for the purpose of deduction under Section 80HH?

(iv) Whether in the facts and circumstances of the case, the Tribunal was right in allowing depreciation on the windmills when the actual commissioning of the windmill took place only after the end of the relevant accounting period?"

2. Although notice was served on the respondent, there is no appearance in person or through the counsel. As such, after hearing learned standing counsel for the Revenue and on going through the records, present order is passed.

3. The assessee herein is engaged in the manufacture of metal powder. In the return filed by the assessee for the assessment year 1994-95, the Assessing Officer disallowed the claim on replacement expenditure of machinery and held that expenditure is capital in nature. Apart from this, the Assessing Authority also disallowed the claim of depreciation on wind mills on the ground that the actual commissioning of the windmill took place only after the relevant accounting period. Yet another issue considered by the Assessing Authority related to exclusion of profit margin of goods captively consumed for the purpose of deduction under Section 80HH and conversion charges and sundry sales as forming part of the turnover for the purpose of calculation of deduction under Section 80HHC. In the appeal preferred against the order of the Assessing Authority, the first Appellate Authority pointed out that as far as the claim on expenditure on replacement of machinery is concerned, one of the items related to oxygen analyser which was necessary to maintain oxygen in the ball mill. Since the whole machinery was not performing well, new machines were installed. They being independent item of machinery, the Commissioner of Income Tax (Appeals) held that the addition of sum of Rs.7,32,277/- was in order and disallowed the claim on the expenditure incurred on the purchase of new machinery. Thus, the Commissioner of Income Tax (Appeal) took the view that replacement had brought about enduring benefit by the installation of new machines, the expenditure was capital in nature.

4. As far as the expenditure incurred on replacement of SS Shell and SS 304 Shell is concerned, the Income Tax Officer pointed out that the assessee got this fabricated and packed with refractories, bricks etc. The Commissioner of Income Tax (Appeals) held that the assessee had replaced the machines purchased from outside parties and they being independent machinery, they could not be regarded as revenue expenditure. Thus, a sum of Rs.11,04,654/- plus Rs.5,52,750/- was confirmed.

5. As regards the other machineries, the Commissioner of Income Tax (Appeals) however agreed with the assessee that they were revenue expenditure. As regards the disallowance of claim in depreciation of wind mill, the Electricity Board certified that the wind mills were put on use on 31.3.1994, thus the Commissioner of Income Tax (Appeals) agreed with the assessee and directed to grant the depreciation on wind mill as per law.

6. As regards the claim on inclusion of conversion charges and sundry sales, the Commissioner of Income Tax (Appeals) held that they form part of the turnover, hence, includable for the purpose of working out the relief under Section 80HHC. On the question of captively consumed materials, for which profit margin was to be included for the purpose of deduction under Section 80HH, the Commissioner of Income Tax (Appeals) held against the assessee. Thus, the appeal filed by the assessee was partly allowed and partly confirmed the assessment order. Aggrieved by the same, the assessee and the Revenue went on appeal before the Tribunal.

7. As far as the assessee's appeal is concerned, it is related to claim under Section 80HH on the inclusion of conversion charges and sundry sales as part of the turnover and the claim on capital expenditure on the cost of fabrication and supply of S.S.Shell and computation of deduction under Section 80HH of the Act with regard to wind mill as well as with regard to transfer price of brass powder and copper powder to the gold bronze unit which was increased by including the gross profit. The Tribunal upheld the contention of the assessee in respect of all the claims. As regards the Revenue's appeal, the depreciation claim on wind mills was however rejected by accepting the fact that the State Electricity Board had given a certificate that the wind mill was commissioned. As regards the replacement of certain machinery, considered as revenue expenditure, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals) and hence the present appeal.

8. As far as the claim on depreciation on wind mill is concerned, considering the fact that the department itself had not questioned the State Electricity Board's certificate that the wind mill was commissioned during the year under consideration, being a factual finding, we have no hesitation in rejecting the Revenue's appeal. Consequently, the fourth question is answered against the Revenue.

9. As regards the inclusion of profit margin of goods captively consumed, herein too, the Tribunal considered in the assessee's appeal that the items were transferred from one unit to another by the same company, hence, the assessee could not make profit from itself. Therefore, the profit margin element had to be excluded. Considering the above fact, we have no hesitation in rejecting the Revenue's appeal.

10. As far as the question regarding inclusion of conversion charges and sundry sales as forming part of the turnover is concerned, the Tribunal held that the conversion charges and the sundry charges did not form part of the turnover for the purpose of deduction under Section 80HH of the Act. Learned standing counsel for the Revenue fairly submitted that this Court had already considered the similar claim in the decision reported in 330 ITR 45 CIT v.

COIMBATORE TWISTERS PVT. LTD, wherein this Court held that conversion charges were not includable in the total turnover for the purpose of working out the deduction under Section 80 HHC. Consequently, the said issue is necessarily answered against the Revenue.

11. As far as sundry sales are concerned, it is seen from the order of the Commissioner of Income Tax (Appeals) that the Commissioner of Income Tax (Appeals) pointed out that it related to scraps from manufactured goods by the assessee. Being a sale, it formed part of the turnover. In considering the said issue, the Tribunal however referred to the decision of this Court reported in 257 ITR 60 CIT v. MADRAS MOTORS LIMITED. However, considering the decision of the Apex Court reported in 295 ITR 228 CIT v. RAVINDRANATHAN NAIR, we have no hesitation in applying the said decision to sundry sales. The sundry sales being part of the gross total income as profit of the business, the same has to be included in the total turnover. Thus, applying the decision of the Apex Court referred to above, as far as sundry sales are concerned, we answer the question in favour of the Revenue and that the sundry sales form part of the turnover for the purpose of deduction under Section 80HHC.

12. This leaves us with one question to consider as regards the amount spent on replacement of independent machinery. Except for a general question raised that the Tribunal was not correct in allowing the deduction of the amounts spent on replacement of independent machinery as revenue expenditure, there is no specific question raised as regards any one of those expenditure. As already pointed out, the Commissioner of Income Tax (Appeals) considered the cost of oxygen analyser as replacement of old one and held it to be a capital expenditure. So too, as regards the SS shell. As far as the first item, oxygen analyser is concerned, going by the narration in the order of the Commissioner of Income Tax (Appeals) as well as in the order of the Assessing Authority, we have no hesitation in agreeing with the Revenue's contention that the cost of replacement of the machinery has to be capitalised.

13. As far as replacement of SS Shell is concerned, considering the fact that what was done was only refurbishing of the existing one and packed with refractories, bricks etc., applying the decision of the Apex Court reported in 293 ITR 201 CIT v. SARAVANA SPINNING MILLS P. LTD, we have no hesitation in holding that it is a current repairs. As regards other machineries considered as revenue expenditure, we confirm the order of the Tribunal since the all items of the parts of the machines were replaced. Hence, the said question stands answered against the Revenue.

14. In the light of the above, only as regards first question of law, the other questions of law are answered against the Revenue. The Tax Case (Appeals) are partly allowed. No costs.

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To

1. The Commissioner of Income Tax  
Madurai
2. The Income Tax Appellate Tribunal, B Bench,  
Chennai