

Cit Vs. Thanjavur Textiles Ltd.

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Court : Chennai

Decided On : Nov-12-2002

Reported in : [2003]127TAXMAN398(Mad)

Appeal No. : T.C. No. 55 of 1998 12 November 2002

Appellant : Cit

Respondent : Thanjavur Textiles Ltd.

Advocate for Pet/Ap. : Mrs. Pushya Sitharaman, *for the Revenue* P.P.S. Janarthana Raja, *for the Assessee*

Judgement :

ORDER

N.V. Balasubramanian, J.

In compliance with the directions of this court in T.C.P. No. 434 of 1996, by order dated 5-3-1997, the Income Tax Appellate Tribunal (hereinafter referred to as the 'the Appellate Tribunal) has stated a case and referred the following questions of law for our consideration :

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the assessee's claim to the tune of Rs. 3,01,50,036 towards replacement of several items of machinery as revenue in nature

2. Whether, on the facts and in the circumstances of the case the Tribunal was right in its conclusion that the expenditure of Rs. 2,78,769 being cost of electrical yarn cleaners is to be allowed as revenue expenditure and not treated as capital expenditure ?

2. The assessment year involved is 1991-92. The issues that arise in both the questions are the same. The assessee claimed a sum of Rs. 3,01,50,036 as revenue expenditure on the ground that it was a replacement expenditure on several items of machinery and also a sum of Rs. 2,78,769 on account of purchase of electric yarn cleaner as revenue expenditure. The Income Tax Officer went into the details of the purchases of machinery and found that the assessee had purchased the machinery and the expenditure incurred were not the current repairs. He also rejected the claim of the assessee to treat the same as revenue expenditure. On appeal preferred by the assessee, the Commissioner (Appeals) upholding the orders of the Income Tax Officer, held that the expenditure incurred was capital in nature. The Appellate Tribunal, on further appeal by the assessee, following its earlier order in I.T.A. No. 664 (Mds)/94 dated 17-2-1995, allowed the assessee's claim as revenue expenditure. The Appellate Tribunal also, following its earlier order, cited supra, allowed the assessee's claim of a sum of Rs. 2,78,769 as revenue expenditure. It is, against the order of the Appellate Tribunal, the revenue sought for a reference and the Appellate Tribunal, on the directions of this court, referred the questions of law mentioned above.

3. We heard Mrs. Pushya Sitharaman, learned senior standing counsel for the revenue and Mr. P.P.S. Janarthana Raja, learned counsel for the assessee. We find that the Appellate Tribunal has committed a grave error in following its earlier order. The earlier order of the Appellate Tribunal in ITA. No. 664 (Mds)/94 dated 17-2-1995 relates to the claim of the assessee on the repairs of certain machinery in question, whereas the finding of the Income Tax Officer in the present case was that there were no repairs, but the assessee purchased certain items of new machinery and therefore, that would constitute capital expenditure. As far as the question of purchase of electric yarn cleaner is concerned, the Appellate Tribunal, no doubt, proceeded on the basis that it was a purchase of machinery, but however allowed the claim of the assessee as revenue expenditure on the ground

that for the earlier years, the same issue was considered by the Appellate Tribunal and it was held to be a revenue expenditure as it was for the replacement of existing worn out parts and therefore, the purchase of machinery would be revenue in nature.

4. We are of the view that the Appellate Tribunal has failed to consider the question whether the assessee has purchased the new machinery or whether only certain items of machinery were purchased to replace the existing machinery or to replace a part of the existing machinery. The Appellate Tribunal should have considered the question with reference to each item of machinery and decided the question whether the purchase of the machinery was capital expenditure or revenue expenditure and whether the purchase of machinery was for replacement of existing machinery or for replacement of a part of an existing machine.

5. Learned senior standing counsel for the revenue referred to the decision of this court in CIT v. Sri Hari Mills (P) Ltd. : [1999]237ITR188(Mad) and submitted that this court has held that the expenditure on replacement of worn out parts of machinery could not be treated as a capital expenditure. She submitted that when the machinery was replaced wholly or a new machinery was added, this court in the same case has held that it would constitute a capital expenditure. Learned senior standing counsel submitted that in the case of Sri Hari Mills (P) Ltd. (supra) the expenditure was incurred on repairs by way of renewal or replacement of worn out parts of the machinery and therefore the said decision has no application to the facts of the case. Learned senior standing counsel also referred to the decisions (i) CIT v. Ooty Dasaprakash : [1999]237ITR902(Mad) ; (ii) CIT v. Sree Narasimha Textiles (P) Ltd. : [1999]238ITR351(Mad) (iii) Ballimal Naval Kishore v. CIT : [1997]224ITR414(SC) (iv) CIT v. Malhotra Industrial Corpn. and (v) CIT v. Tuticorin Spg. Mills Ltd. : [2001]249ITR694(Mad) and submitted that in the above decisions it was held that the expenditure incurred in replacing parts of machinery would not be regarded as capital expenditure. According to the learned senior standing counsel, in Tuticorin Spinning Mills Ltd.s case (supra) certain worn out parts of ring frames were replaced and therefore, this court held that it would constitute current repairs. Learned senior standing counsel also referred to the decision of this court in CIT v. Madras Cements Ltd. : [2002]255ITR243(Mad)

wherein this court held that repair implies the existence of a thing which has malfunctioned and can be set right by effecting repairs which may involve replacement of some parts, thereby making the thing as efficient as it was before or as close to it as possible and replacement implies the removal or discarding of the thing that was in use, by a different or new thing capable for performing the same function with the same or greater efficiency. Learned senior standing counsel also referred to the decision of this court in CIT v. Thanjavur Textiles Ltd. : [2002]253ITR138(Mad) and submitted that in the assessee's own case for an earlier assessment year, there was replacement of worn out parts of machinery and in that situation, this court held that it would constitute revenue expenditure. Learned senior standing counsel for the revenue submitted that the decision of this court rendered in the assessee's own case in : [2001]253ITR138(Mad) has no application to the facts of the case as the assessee has purchased new machinery. She also referred to the report of the Board of directors and the order of the Commissioner (Appeals) to show that the expenditure was capital in nature. Learned senior standing counsel also referred to the decision of the Delhi High Court in CIT v. Volga Restaurant (2001) 253 ITR 405 the decision of the Supreme Court in CIT v. Kalyanji Mavji & Co. : [1980]122ITR49(SC) and the decision of the Punjab and Haryana High court in CIT v. Indian Woollen Textile Mills (P) Ltd. (1978) 122 ITR 441.

6. Mr. P.P.S. Janarthana Raja, learned counsel appearing for the assessee, on the other hand relied upon the decision of this court in CIT v. Salem Co-operative Spg. Mills Ltd. : [1984]148ITR176(Mad) wherein this court held that the expenditure incurred in the replacement of conventional card clothing by metallic card clothing in the carding section would constitute revenue expenditure. Learned counsel for the assessee strongly placed reliance on the decision of the Kerala High Court in CIT v. Co-operative Sugars Ltd. : [1999]235ITR343(Ker) and submitted that the manufacturing units should be taken as one unit and if there is any replacement of any machinery in the manufacturing unit, it would constitute a revenue expenditure. Learned counsel also relied upon the decision of the Kerala High Court in CIT v. Madras Spinners Ltd. : [1994]207ITR35(Ker) .

7. Learned senior standing counsel for the revenue, in her reply relied upon the decision of this court in CIT v. Madras Cements Ltd.s case (supra) and submitted that this court has not agreed with the view expressed by the Kerala High Court in Co-operative Sugars Ltd.s case (supra) and this court has specifically rejected the contention that the entire manufacturing facility from the stage of processing of raw material to the delivery of the final finished product should be taken as one unit.

8. No doubt, Mr. P.P.S. Janarthana Raja, learned counsel submitted that the decision of this court in Madras Cements Ltd.s case (supra) was rendered while considering the question of allowability of certain expenditure claimed on current repairs. However, we are of the view that it is not necessary to discuss the various-decisions relied upon by the learned senior standing counsel for the revenue and the learned counsel for the assessee. We are of the view that the Appellate Tribunal should first consider the factual question whether the assessee has replaced part of the existing machinery or whether the assessee has replaced the existing machinery or whether the assessee has purchased new machinery, and then decide the question whether the expenditure would involve current repairs or whether the expenditure is allowable as revenue expenditure or not allowable as capital expenditure. Since the Appellate Tribunal has not decided the factual matter, but followed its earlier order which dealt with the case of repairs, we are of the view that this case should be remitted back to the Appellate Tribunal. Learned counsel for the assessee, in his fairness, has not seriously disputed the said position.

9. Accordingly, we remit the matter to the Appellate Tribunal and the Appellate Tribunal is directed to consider and decide the issues de novo. In the view we have taken, we are not answering the questions referred to us and we direct the Appellate Tribunal to consider the questions in accordance with law. No costs.