

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TCA.No.917 of 2009

Commissioner of Income Tax,
Chennai

.. Appellant

Vs.

M/s.TVS Motors Limited,
Jayalakshmi Estates,
No.29, Haddows Road,
Chennai - 600 096.
PAN: AAACS7032B

.. Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 09.04.2009 in I.T.A.No.491/Mds/2008 for the assessment year 2004-05.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel and
Ms.V.Pushpa

For Respondent : Mr.Vijayaraghavan
for M/s. Subbaraya Aiyar Padmanabhan

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J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated 09.04.2009 in ITA.No.491/Mds/2008 passed by the Income Tax Appellate Tribunal Madras, 'D' Bench in the assessment year 2004 - 05.

2.The appeal has been admitted on the following substantial questions of law :

"1.Whether on the facts and circumstances of the case, the Tribunal was right in allowing expenditure related to advance given for R&D equipment under Section 35(1)(iv) of the Income Tax Act?

2.Whether on the facts and circumstances of the case, the Tribunal was right in holding that expenditure on replacement of dies and moulds are to be allowed as current repairs?

3.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction of entry tax paid under Section 43B without verifying whether such entry tax had been set off against sales tax paid and the treatment given to the same in its accounts?

3.We have heard Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant/revenue and Mr.Vijayaraghavan, learned counsel for the respondent/assessee.

4.The revenue does not dispute the fact that in the assessee's own case for the assessment year 2003-04, three substantial questions of law raised in this appeal were considered and they were decided against the revenue and in favour of the assessee in the decision reported in **[2014] 364 ITR 0001 (Mad) [Commissioner of Income vs. TVS Motors Limited]**. The Substantial Questions of law 1 to 3 herein were identical to that of the Substantial Questions of law 3 to 5 in the said appeal for the assessment year 2003-04. The Substantial Questions of law were answered against the revenue on the following terms:

"28. As regards the expenditure on Research & Development, after analysing the facts, the Tribunal rightly applied the decision reported in **255 ITR 395** in the case of **CIT Vs. Rane Brake Linings Ltd.** Consequently, we have no hesitation in rejecting the Revenue's plea.

29. As regards the expenditure on dies & moulds, the assessee pointed out that it debited an amount of Rs.11,17,68,169/- towards dies and moulds only to replace them in the place of worn out dies and moulds. The

assessee in the memorandum of income added this amount to the total income and claimed the cost of dies and moulds of Rs.22,66,52,504/- under Section 31 of the Act. The assessee stated that within a period of one year of installation, the life of the dies and moulds would become obsolete and this was due to high production involved. Thus, replacement of the new dye in the place of old dye would qualify for current repairs under Section 31 of the Act. The Assessing Officer, however, rejected the contention of the assessee and the Assessing Officer pointed out that the assessee was claiming depreciation upto 1999-2000 under Section 32 of the Act and only in the year under consideration, it started claiming deduction under Section 31 of the Act. The Tribunal pointed out that the dies and moulds were not plant and machinery, yet the replacement of dies and moulds were not in the nature of installation of machinery in the factory. Such moulds and dies were normally attached to the machines to suit the individual requirement of particular product. So holding, the Tribunal held that expenditure incurred on replacement of dies and moulds was revenue in nature. It relied on the decision of Karnataka High Court in the case of *Mysore Spun Concrete Pipe Pvt. Ltd*, reported in **194 ITR 159**.

30. As far as this issue is concerned, learned counsel appearing for the assessee placed reliance on the decision of this Court reported in **(2013) 357 ITR 720 (Mad)** in the

case of *Super Spinning Mills Ltd., Vs. Assistant Commissioner of Income-tax* related to the expenditure on replacement of the machinery parts. The assessee therein engaged in the business of manufacture and trading in cotton yarn and allied products and the assessee incurred expenditure in respect of replacement of certain textile machinery. On a question as to whether such replacement of parts would be current repairs of capital in nature, this Court considered the decisions in the case of *CIT Vs. Saravana Spinning Mills P; Ltd.*, reported in (2007) 293 ITR 201 (SC), *CIT Vs. Ramaraju Surgical Cotton Mills* reported in (2007) 294 ITR 328 (SC) and *CIT Vs. Mangayarkarasi Mills P.Ltd.*, reported in (2009) 315 ITR 114 (SC) and pointed out that the question as to whether the expenditure incurred on replacement of machinery is revenue or capital rests on the nature of capital incurred vis-a-vis the benefit derived. This Court referred to the decision in the case of *CIT Vs. Saravana Spinning Mills P.Ltd.*, reported in (2007) 293 ITR 201 (SC) and in particular to the decision in the case of *CIT Vs. Sri Mangayarkarasi Mills P.Ltd.*, reported in (2009) 315 ITR 114 (SC)

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31. Applying the ratio of the decision cited above, when we look into the facts of the above cases, it is evident that with regard to the moulds and dies attached to the machinery like press designs specification, moulds

and dies are not independent of the plant and machinery, but are parts of the machinery. Once the dies are worn out, the machines cannot turn out the product to the business specifications and this has to be obtained only on a replacement of the dies and moulds, a fact which is not refuted by the revenue. It is no doubt true that the assessee claimed depreciation on dies and moulds. Yet in the decision in the case of *CIT Vs. Mahalakshmi Textile Mills Ltd.*, reported in (1967) 66 ITR 710 (SC), the Apex Court pointed out that all questions whether of law or of fact, which relate to the assessment year of the assessee could be raised in any year under consideration before the Officer as well as before the Income Tax Appellate Tribunal too and if, for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, the grant of relief to an assessee is justified on another ground, the Revenue is bound to consider such claim of granting the relief. The Apex Court pointed out that the right of the assessee to the relief is not restricted to the plea raised by him. On the facts before us, when the dies and moulds were attached to the machine to manufacture the designed product, we have no hesitation to accept the plea of the assessee that the claim would fall for consideration only under Section 31 of the Act.

32. In the unreported decision of this Court dated 27.04.2012 in Tax Case (Appeal).No.1011 of 2005 (*The Commissioner of Income Tax, Madurai Vs. M/s.Machado*

Sons) on the question of repair made to a ship, this Court pointed out that when the object of the expenditure was not for bringing into existence a new asset or to obtain a new advantage, the said expenditure qualifies to be considered as current repairs under Section 31 of the Act. In so holding, after referring to the decision of the Apex Court in the case of *CIT Vs. M/s.Saravana Spinning Mills P.Ltd.*, reported in **(2007) 293 ITR 201**, this Court further pointed out to the decision of the Apex Court where it cautioned that all repairs are not current repairs on Section 31(1) of the Act; Section 31(1) of the Act limits the scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to the concept of "current repairs". Thus, this Court pointed out that what is allowable as revenue expenditure under Section 37 of the Act are those expenditure other than one falling for consideration under Sections 30 to 36 of the Act. The Apex Court further pointed out the example that when the picture tube in a television set is replaced, such repairs would come within the connotation of the phrase "current repairs". Thus, applying these two decisions, we have no hesitation in rejecting the Revenue's appeal. We hold that the claim being considered as current repairs, the same would fall under Section 31 of the Act as current repairs. To that extent, we modify the order of the Tribunal.

33. On the question of deduction under Entry Tax,

the Tribunal rightly considered the claim of the assessee for deduction of entry tax payment made by the assessee. The Assessing Officer admitted that the deduction on account of Entry Tax is allowable if the payment is actually made and admittedly, payment of entry tax has been made by the assessee; the entry tax paid would get the adjustment as against the Sales Tax liability, consequently, any deduction would amount to total deduction."

5.Thus, following the above decision in the assessee's own case, the appeal filed by the revenue is dismissed and the Substantial Questions of law were answered in favour of the respondent/assessee. No costs.

(T.S.S., J.)

(V.B.S., J.)

03.07.2019

Speaking order: Yes/No
Index: Yes/No
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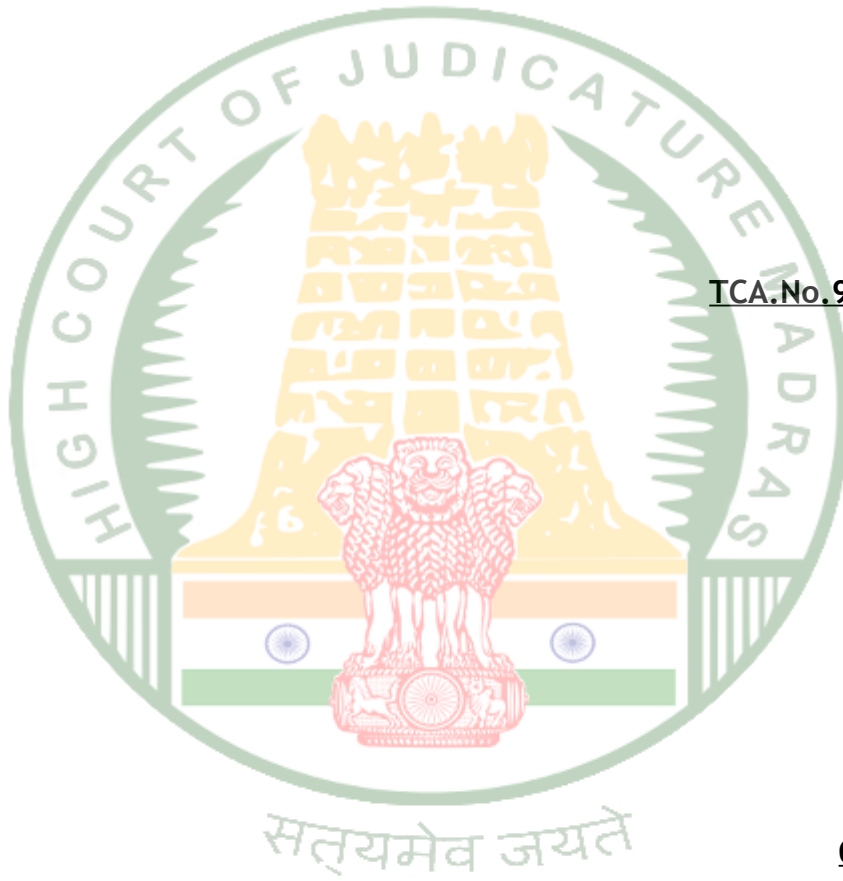
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T.S.SIVAGNANAM, J.

and

V.BHAVANI SUBBAROYAN, J.



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