

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2009

Coram

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mr.Justice M.M.SUNDRESH
TAX CASE(APPEAL)Nos.2409 to 2412 of 2008
& TCMP.NOS.43 TO 45 OF 2008

Commissioner of Income Tax III
Chennai

...Appellant in
all the appeals

Vs
M/s.SPIC Limited, Chennai

...Respondent in
all the appeals

APPEALS under Section 260A of the Income Tax Act against the common order dated 25.3.2003 made in ITA.Nos.1160 to 1163/Mds/99 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench for the assessment years 1989-90 to 1992-93.

For Appellant : Mr.K.Subramaniam, learned Standing Counsel

JUDGMENT

(JUDGMENT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J)

By formulating the following substantial questions of law :

"i. Whether in the facts and circumstances of the case, the Tribunal was right in holding that depreciation should be allowed on standby spare parts even though they were not taken for use during the year ?

ii. Whether in the facts and circumstances of the case, the Tribunal was right in holding that investment allowance should be allowed on standby spare parts even though they were not taken for use during the year ?

iii. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenses related to obtaining fixed deposits from the public is a revenue expenditure liable for deduction ? And

iv. Whether in the facts and circumstances of the case, the Tribunal was right in holding that unabsorbed depreciation can be set off from income from house property ?"

the Revenue has come up by way of appeals against the common order of the Income Tax Appellate Tribunal dated 25.3.2003 made in ITA.Nos.1160 to 1163/Mds/99 relating to the assessment years 1989-90 to 1992-93.

2. The facts culled out from the statement of facts in the memorandum of grounds of appeals read as follows :

For the relevant assessment years, the assessee company claimed the benefit of carry over of the losses of the earlier years comprising of business loss, unabsorbed depreciation and unabsorbed business allowances. The Assessing Officer, inter alia, disallowed the expenditure on standby assets, deposit mobilization expenses, investment allowance on standby assets and set off of unabsorbed depreciation against house property income.

3. Aggrieved by the assessment orders, the assessee preferred appeals to the Commissioner of Income Tax (Appeals), who allowed the appeals based on the orders of the earlier years. The Revenue carried the matter on appeal to the Income Tax Appellate Tribunal. The Tribunal also, relying on its own decision, decided all the issues in favour of the assessee. The correctness of the same is canvassed by the Revenue in these appeals as aforesaid by formulating the above questions of law.

4. We have heard the learned counsel appearing for the Revenue and perused the materials available on record.

5. In respect of the first and second questions, a Division Bench of this Court in the case of CIT, Chennai Vs. Southern Petrochemical Industries Corporation Limited in TC(A)Nos.74 and 75 of 2003 by judgment dated 29.1.2007 considered the issue and decided in favour of the assessee. Learned counsel for the Revenue submits that the issue is covering the questions of law raised in this case. The third question of law formulated in this case is also covered and decided in the very same decision in favour of the assessee by observing as follows :

"For deciding the issue that the expenses relating to obtaining fixed deposits are closely linked with the business requirement of the assessee, it is apposite to have a cursory look on the decided case laws on this point. In India Cements Ltd. Vs. CIT (60 ITR 52), while deciding the nature of the amount spent towards stamps, registration fees, lawyer's fees, etc., for obtaining loan, the Supreme Court observed as follows :-

'A loan may be intended to be used for the purchase of raw material when it is negotiated, but the company, may, after raising the loan, change its mind and spend it on securing capital assets. Is the purpose at the time the loan is negotiated to be taken into consideration or the purpose for which it is actually used ?.....the purpose for which the new loan was required was irrelevant to the consideration of the question whether the expenditure for obtaining the loan was revenue expenditure or capital expenditure.

To summarise this part of the case, we are of the opinion that :(a) the loan obtained is not an asset or advantage of an enduring nature; (b) that the expenditure was made for securing the use of money for a certain period; and (c) that it is irrelevant to consider the object with which the loan was obtained.'

Observing so, the Supreme Court held that the act of borrowing money was incidental to the carrying on of business, the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period and it was irrelevant to consider the object with which the loan was obtained and

therefore, the amount spent was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of the assessee's business and was therefore allowable as a deduction. The Apex Court also held that obtaining capital by issue of shares is different from obtaining loan by debentures.

The Bombay High Court in CIT Vs. Mahindra Uginde and Steel Co. Ltd. (250 ITR 696) considered the allowability of stamp duty paid on debenture issue as business expenditure and held that the expenditure is revenue in nature. In that case, attack was made by the Revenue on the strength of Section 35D of the Act which deals with amortisation of certain preliminary expenses and the Bombay High Court held that

'Section 35D deals with amortisation of certain preliminary expenses. Under Section 35D(1)(ii), it is laid down that after the commencement of the business any expenditure as described in Section 35D(2), which is incurred in connection with the extension of the industrial undertaking or with regard to setting up a new industrial unit then the assessee shall be allowed a deduction at an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or the previous year in which expansion of the industrial undertaking is completed, etc. In the present case, on the facts, the Tribunal has found that the object of the debenture issue was to meet the working capital requirement of the assessee and therefore, the expenditure was considered to be a revenue expenditure.'

In CIT Vs. Investment Trust of India Limited (264 ITR 506), this Court held that the expenditure on advertisements in newspapers inviting fixed deposits from the public is allowable in the words :

'In view of the provisions contained in Section 58A of the Companies Act, 1956, the assessee company had to advertise the notice calling for deposits and if there was any breach, the assessee was liable to be proceeded against under the relevant provisions of the 1956 Act. Section 37(3A) was introduced to curb extravagant and socially wasteful expenditure on advertisement at the cost of the exchequer. The assessee had incurred the expenditure on advertisements for collecting fixed deposits and the advertisements were statutory advertisements and therefore, the provisions of Section 37(3A) read with Section 37(3B) were not applicable to the said expenditure.'

Considering the ratio laid down in the above said decisions, we are of the view that when the Tribunal has recorded a finding that the expenses relating to obtaining fixed deposits are closely linked with the business requirement of the assessee, such expenses are allowable expenses. We therefore hold that the Tribunal was right in holding that the expenses for obtaining fixed deposits from the public is revenue in nature. Accordingly, we answer the second question in the affirmative and against the Revenue."

6. In respect of the fourth question, it could be seen that the amendment has been incorporated in the provision that the carry forward depreciation cannot be given set off from the business income with effect from 1.4.2002. The Tribunal has taken in aid the Supreme Court judgment in Jaipuria China Clay Mines's case (reported in 59 ITR 555) and the decision in the case of CIT Vs. Mother India Refrigeration Industries P.Ltd. (155 ITR 711). The very same question has been considered by the Supreme Court in respect of 1922 Act and held in the affirmative in favour of the assessee. The Tribunal has followed only the dictum laid down by the Supreme Court. In addition to the above, the

very statute provides that such a set off can be done till the provision was amended with effect from 1.4.2002.

7. All the questions of law, which have been formulated in these appeals, have already been answered in favour of the assessee, which require no determination at this point of time by entertaining these appeals.

8. Accordingly, these appeals are dismissed. Consequently, all connected pending TCMPs are also dismissed. No costs.

(K.R.P.J.) (M.M.S.J.)

07.12.2009

Index : Yes

Internet : Yes

K.RAVIRAJA PANDIAN,J

AND

M.M.SUNDRESH,J

RS

To

1. The Commissioner of Income Tax III, Chennai.
2. The Income Tax Appellate Tribunal, Madras 'B' Bench.