

Relevant Extracts from Supreme Court order:M/S. Sri Mangayarkarasi Mills (P) Ltd

Controversy:

"The main question that needs to be decided in this appeal may be formulated as follows

"Whether expenditure incurred on replacement of machinery, in the facts and circumstances of this case, amounts to `revenue expenditure' deductible under section 37 of the Act or `current repairs' deductible under section 31 of the Act."

". The Saravana Mills (supra) case also restricts the scope of `current repairs' to repairs made to machinery, plant and/or furniture. In this case, replacement of machine can at best amount to a repair made to the process of manufacture of yarn. Further this court has also observed in Saravana Mills (supra) case that if replacement was held to be `current repair' in such cases, section 31(i) will be completely redundant and absurdity will creep in because repair implies existence of a part of the machine which has malfunctioned, which is impossible in the case of such replacement. Thus, this replacement expenditure cannot be said to be `current repairs' after the decision in the Saravana Mills (supra) case...

....Given that section 31 of the Act is not applicable to the said expenditure of the assessee, the next issue is whether it can be considered `revenue expenditure' of the nature envisaged under section 37 of the Act...

We are of the opinion that the expenditure of the assessee in this case is capital in nature and there is sufficient judicial precedent to support this view. In the case of Travancore Cochin Chemicals Ltd. V. CIT ((1997) 2 SCC 20) this Court held that expenditure is of a capital nature when it amounts to an enduring advantage for the business and repair is different from bringing a new asset for the business. Further, in Lakshmiji Sugar Mills (P) Co. v. CIT (AIR 1972 SC 159) it has been held by this Court that bringing into existence a new asset or an enduring benefit for the assessee amounts to capital expenditure. We have already explained why replacement, in this case, amounts to bringing into existence a new asset and also an enduring benefit for the assessee. It is clear then that expenditure of the assessee here is not of a revenue nature and thus, cannot be claimed as a deduction under section 37 of the Act.

It is clear on record that the assessee has sought to treat the said expenditure differently for the purposes of computing its profit and for the purpose of payment of income tax. The said expenditure has been treated as an addition to the existing assets in the former and as revenue expenditure in the latter.

Though accounting practices may not be the best guide in determining the nature of expenditure, in this case they are indicative of what the assessee itself thought of the expenditure it made on replacement of machinery and that the claim for deduction under

the Act was made merely to diminish the tax burden, and not under the belief that it was actually revenue expenditure."

ALSO REFER ON AFORESAID ISSUE FOLLOWING DECISIONS WHERE SARAVANA SC IS CONSIDERED:

- A) DELHI ITAT IN COSMAT MAX 29 SOT 436
- B) WHIRLPOOL 22 SOT 103
- C) CHENNAI ITAT IN PRABHU SPINNING MILLS
- D) KAR HIGH COURT IN SAGAR TALKIES