Court No. - 37/Reserved

Case :- INCOME TAX REFERENCE No. - 97 of 1984

Petitioner :- C.I.T., Kanpur
Respondent :- M/S Saran Engineering Co., Kanpur
Petitioner Counsel :- S.C.,B Agrawal
Respondent Counsel :- Sri Vikram Gulati

Hon'ble Prakash Krishna,J.
Hon'ble Subhash Chandra Nigam,J.

(Delivered by Prakash Krishna)

The Income Tax Appellate Tribunal, Allahabad 'B' Bench Allahabad has referred the following questions for the opinion of this Court under Section 256 (1) of the Income Tax Act:-

1. "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the expenditure of Rs.1,66,516 incurred by the assessee for the asstt. year 1976-77 under the head "Repairs to Factory Building Account" was of Revenue nature and not of a capital nature ?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that by writing back the amount of Rs.1,50,729 in the asstt. Year 1976-77, there was no cessation of liability for payment of gratuity and that this amount was not includible in the taxable income of the assessee for the assessment year 1976-77 ?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee was entitled to claim deduction of bonus on the basis of actual payment as well as on accrual basis for the assessment year 1977-78 and that the amount of Rs.4,25,500/- was allowable to the assessee as a deduction for bonus for that

year?"

The assessment years 1976-77 and 1977-78 are presently involved. The assessee is a company engaged in sugar industry. The previous years ended on 31st of March, 1976 and 31st of March, 1977 respectively. It owns a large industrial shed in its factory premises covered with G.C. sheets and had been worn out over the year. The roof of the shed , covered with G.C. sheets had been worn out over the years. The assessee purchased new sheets in the accounting year relevant to the asstt. Year 1976-77 for a sum of Rs.1,65,516. The bill for the same was raised by the supplier in two parts. One bill was dated 31.3.1975 for a sum of Rs.1,20,013 and the other bill was dated 16.3.1976 for a sum of Rs.44,782. The contractors who carried out the replacement of the sheets raised bills for the work done in two portions. The first portion was covered by the bill dated 22.12.1975 by which G.C. sheets worth Rs.1,20,013 were replaced and the another portion was covered by the bills dated 16.3.1976 and 24.7.1975, whereby sheets aggregating to the value of Rs.44,781 were replaced. Therefore, the assessee claimed the deduction of Rs.1,66,516 for the assessment year 1976-77, which the I.A.C. (Assessment) rejected holding it to be capital in nature. In appeal, the CIT (Appeals) bifurcated the amount into two and held that only Rs.1,20,013 could be claimed in the asstt. Year 1976-77, while the claim for deduction of Rs.44,781 pertained to the asstt. year 1977-78. The assessee, therefore, took up an additional ground before the CIT (Appeals) for the asstt. year 1977-78, wherein it claimed the deduction of Rs.44,781. The CIT (Appeals), however, upheld the disallowance of Rs.1,53,516 on the ground that the expenditure incurred by the assessee could not be treated as "Current Repairs" as contemplated u/s 30(a) (ii) of the Act. He further held that the assessee was not also entitled to the deduction u/s 37(1) of the Act on account of the capital nature of the expenditure.

The matter was carried before the Income Tax Appellate Tribunal at the instance of the assessee wherein reliance was placed

upon the **Commissioner of Income Tax, Lucknow Vs. Kanodia Cold storage : (1975) 100 ITR 155** and **CIT Vs. Kalyanji Mavji and Co. (1980) 122 ITR 49** in support of the contention that the expenditure incurred by the assessee was "Current Repairs" as contemplated under Section 30 (a) (ii) of the Income Tax Act. The Tribunal also found that the assessee was entitled for deduction of bonus on the basis of actual payment as well as on accrual basis for the assessment year 1977-78. It also held that a sum of Rs.1,50,729/- was not includible in the taxable income of the assessee for the assessment year 1976-77.

Heard Sri R.K. Upadhya, learned standing counsel for the department. None appeared on behalf of the assessee.

Taking the first question first, it may be noted that in para 6 of the order, the Tribunal has found that the assessee's case is fully covered by the ratio laid down in the case of **Kalyanji** (supra). It has been further found that the decision of this Court in the case of **Kanodia Cold-storage** (supra) also supports the stand taken on behalf of the assessee. It consequently decided the said issue in favour of the assessee.

However, he referred the **Commissioner of Income Tax Vs. Sri Mangayarkarasi Mills P. Ltd. : (2009) 315 ITR 114 (SC)** in support of his contention that repairs amounts capital expenditure. The relied upon decision in our considered view is not applicable to the facts of the present case. The relied upon decision is in respect of replacement of a machinery by a new machinery. It was the case of a spinning mill. In this case, the Supreme Court has observed that each machine in a spinning mill does a different function and the product from one machine is taken and manually fed into another machine and the output is taken, all the machines are, thus, not integrally connected. It may be noted that it was a case of replacement of machine as a whole. In this very case, the Supreme Court has relied upon its earlier judgment in the case of **Commissioner of Income Tax Vs. Saravana Spinning Mills P. Ltd. : JT. (2007) (10) S.C. 111.** In the

case of **Saravana Spinning Mills P. Ltd.** (supra), the Apex Court has interpreted the words " Current Repairs". It has been laid down that the basic test to find out as to what would constitute "Current Repairs", is that the expenditure must have been incurred "to preserve and maintain" an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage.

Applying the above test to the facts of the present case, it has been found that the assessee has replaced the worn out G. C. sheets in the relevant assessment years. By replacing the G.C. sheets, the assessee has carried on the repairs as are necessitated by the day to day wear and tear. The repairs may be small or major. If it is major repair, it may involve considerable amount of money. But the amount of money spent alone cannot be a factor to determine whether the expenditure falls under "Current Repairs" or not. As held by the Andhra Pradesh High Court in **Nathmal Venkatlal Parik and Co. Vs. CIT (1980) 122 ITR 168,** it is nature of the repairs carried out by the assessee that matters for grant of deduction.

In this fact situation, we have no reason not to agree with the findings recorded by the Tribunal. The department has failed to discharge its burden that the said question of law was wrongly decided by the Tribunal. Consequently, question No.1 is decided in affirmative i.e. in favour of the assessee and against the department.

So far as the second question is concerned, the Tribunal has dealt with the matter in paragraph 29 of its order and has held that on the facts available on record, it is difficult to hold that there was any cessation of the assessee's liability to pay its liability to its employee through the gratuity fund. It took into consideration the trust deed dated 27.12.1975. The Tribunal has observed in its order that by making entires in the books of account, the assessee has not got any benefit which which it had already received deduction in the earlier years for the assessment year 1972-73, it has been noticed in the order of the Tribunal that the assessee had got deduction in respect of the

contribution made. It has placed reliance upon a decision of Bombay High Court in the case of **Commissioner of Income Tax Vs. Sadabhakti Prakashan Printing Press (P.) Ltd.; 125 ITR 326.**

No attempt was made before us by the learned counsel for the department to show that the said approach of the Tribunal is in any manner unjustified or contrary to law. In absence of any contrary material, it is not possible for this Court to take a different view of matter. The learned counsel even did not think it fit to place the other portion of order of the Tribunal except paragraph -29 thereof. This being the position, we hold that the Tribunal was justified in deleting the addition of Rs.1,50,723/- from the total income of the assessee.

So far as the question no.3 is concerned, it was pointed out to us that the view which has been taken by the Tribunal is in consonance of the judgment of Gujrat High Court in the case of **Commissioner of Income Tax Vs. Standard Ratiators Pvt. Limited : (2006) 286 ITR 207**. Even otherwise also, the learned standing counsel could not place before us any material to show that the order of Tribunal suffers in any manner with any illegality or irregularity. It may be noted that the assessee had actually paid a sum of Rs.4,62,773/- as bonus and claimed deduction of the same. The I.A.C. (assessment) allowed deduction of the above sum but disallowed the assessee's claim for deduction of Rs.4,26,500/- which was made on accrual basis. The said deduction has been allowed by the Tribunal. The Tribunal found that the stand taken by the assessee is well-founded and should be accepted. Similar kind of claim was allowed by the Tribunal in the case of **M/s. Dhampur Sugar Mills Co. Limited** referred in paragraph 40 of its order. The Tribunal has followed the decision of Calcutta High Court in the case of **Snow-white Food Products Co. Limited (1982, 29 G.T.R. - Calcutta 3).**

The learned standing counsel could not refer any decision either of High Court or of Apex Court wherein a different view might have been taken. In absence of any material otherwise, we find that the view taken by the Tribunal is a reasonable one and calls for no

interference.

In view of the above discussions, all the three questions referred to us are decided in affirmative i.e. against the Revenue and in favour of the assessee.

Since none appeared. No order as to costs.

(Prakash Krishna, J.)

(Subhash Chandra Nigam, J.)

Order Date :- 16.12.2009
LBY