
(2008) 06 MAD CK 0052

In the Madras High Court

Case No : Tax Case (Appeal) No's. 362 and 363 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Carborandum Universal Ltd.

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Income Tax Act, 1961 — Section 36(1)

Citation : (2008) 219 CTR 202 : (2009) 177 TAXMAN 347

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These appeals are filed by the Revenue against the order of the Tribunal Madras "A" Bench, dt. 24th Aug., 2007

passed in ITA Nos. 797/Mad/2003 and 542/Mad/2005 respectively. The relevant assessment years are 1998-99 and 1999-2000. The

substantial questions of law formulated in these appeals are as follows:

1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in deleting the addition in respect of payments made to

M/s McKinsey & Co., management consultant and the same should be allowed as revenue expenditure is valid in law?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in deleting the addition made towards interest paid on

borrowed capital is valid?

2. The facts of the case are as follows:

The assessee is a company engaged in the manufacture and sale of industrial

ceramics. The assessee, for the relevant assessment years, had claimed a sum of Rs. 75 lakhs being fees paid to M/s McKinsey & Co., management consultants. The claim was made on the ground that the said amount was paid towards professional fees for assessment of market attractiveness of assessee's business in terms of gaining global market, reputise on dealing with global markets, evaluation of assessee's business ability to compete, analysis of business's future growth trend, development detailed business strategies for assessee to grow in the dynamic business environment. The AO was of the opinion that the amount was paid towards reorganization of business which would have long-term benefits and therefore, the same should be allowed only in five equal instalments over a period of five years. Thus, he allowed a sum of Rs. 15 lakhs and added the sum of Rs. 60 lakhs to the income. The action of the AO was confirmed by the CIT(A) on appeal by the assessee. Agains that order the assessee preferred an appeal before the Tribunal. The Tribunal held that no new business has been started by the assessee company and consultancy services were received only towards restructuring of the business. Therefore, it cannot be said that it is a capital expenditure. On that reasoning, the Tribunal set aside the order of the lower authorities and allowed the assessee's appeal.

3. It is the further case of the Revenue that the assessee has incurred an expenditure of Rs. 38,73,450 as interest paid on capital borrowed for expansion of assessee's business. The AO added the entire interest to the cost of the fixed asset by rejecting the claim of the assessee that the expenditure is revenue in nature. Against that finding, the assessee preferred an appeal before the CIT(A) and the CIT(A) sustained the order of the AO. Against that order the assessee preferred an appeal before the Tribunal and the Tribunal following the decision of this Court in the case of same assessee in CIT v. Carborundum Universal Ltd. (2006) 205 CTR (Mad) 498 set aside the order of the CIT(A) and deleted the additions and allowed the assessee's appeal. Aggrieved by the said order, the appellant has preferred this appeal.

4. Heard the learned Counsel on either side and perused the materials available on record.

5. It is well settled that it is not only permissible, but is also necessary for any

business to update its own knowledge and adopt better ways of organising its business, if it is to survive in the market. The expenditure incurred for such purpose cannot be regarded as capital expenditure and it is only a revenue expenditure. The assessee, with an intention of bringing about improvements in the way it did its business, had sought for and obtained reports of the consultant for assessment of market attractiveness in terms of gaining global market, reputise on dealing with global markets, evaluation of assessee's business ability to compete, analysis of the future growth trend of the business, development of detailed business strategies for the assessee to grow in the dynamic business environment. The fees paid to the consultant was disallowed by the Revenue officials as capital expenditure on the premise that the benefits derived from such consultancies would ensure to the future years also. According to the learned Counsel for the Revenue, this question of law is covered against the Revenue by the decision of this Court in the case of Commissioner of Income Tax Vs. Crompton Engineering Co. Ltd. (now Best and Crompton Engineering Ltd.), , in which it was held as follows:

Merely obtaining a report from the management consultant and paying the fees therefor, could not be regarded as capital expenditure as such report was not obtained as part of documentation packages, but was obtained in a contract covering comprehensive restructuring of the business involved. No new line of business was started on the strength of the report of the consultants. The report was not regarded as essential part for any new business that the assessee commenced thereafter. In the circumstances of the case, the expenditure incurred by the assessee, in obtaining that report was clearly an expenditure of the revenue in character.

Hence, the first question of law is covered against the assessee (sic.-Revenue).

6. In respect of the second question of law, the interest paid on borrowed capital, the assessee borrowed money for the expansion project and claimed deduction u/s 36(1)(iii) of the IT Act. In respect of the asst. yr. 1994-95 in assessee's own case, the issue has been decided in favour of the assessee by a Division Bench of this Court in the case of CIT v. Carborundum Universal Ltd. (supra). This factum has also been brought to the knowledge of the Court by the learned Counsel for the Revenue.

7. Therefore, in terms of the above cited rulings, the appeals are dismissed as

the questions of law raised in the present appeals are covered against the Revenue.