(2006) 02 MAD CK 0131

In the Madras High Court

Case No : Tax Case (Appeal) No''s. 28 and 29 of 2006 and TCMP No. 28 of 2006

Commissioner of Income Tax APPELLANT

Vs

Dattatreya Textiles Ltd. RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:
Income Tax Act, 1961 — Section 2(11), 260A, 32(1)

Citation : (2006) 02 MAD CK 0131

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeals are directed against the common order of the Tribunal in ITA Nos. 436 and 1014/Mad/2000, dt. 8th July, 2005.

2. The Revenue is the appellant. The assessee is a limited company engaged in the textile business. They have filed their return for the asst. yrs. 1993-94 and 1996-97. Their claim with regard to the cost of replacement of pnemofil unit costing Rs. 1,14,937 for the asst. yr. 1993-94 and blow room scutcher costing Rs. 25,69,459 for the asst. yr. 1996-97, was disallowed by the AO, who was of the opinion that replacement of old by new machinery cannot be treated as revenue expenditure and allowed depreciation. The expenditure was treated as capital expenditure. Aggrieved by the said orders, the assessee filed an appeal before the CIT(A), who allowed the appeal, holding that the cost of replacement of machinery is to be treated as revenue expenditure by applying the decision of the Tribunal Madras in the case of Shree Venkatesa Ltd., and consequently, the depreciation granted was withdrawn. The Tribunal dismissed the appeal file by the Revenue holding that the replacement of part in a machinery has to be treated as revenue in nature.

3. Aggrieved by the same, the Revenue has preferred the above appeals raising

the following substantial questions of law :

1. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure ?

2. Whether, in the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure ?

3. Whether, in the facts and circumstances of the case, the Tribunal was right in deciding the issue without going into the concept of block of asset ?

4. The question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the CIT and the Tribunal, finding that replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

5. This Court, in The Commissioner of Income Tax Vs. Janakiram Mills Ltd., , held that all plant and machinery put together amount to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced.

6. In view of the ratio laid down by this Court in the decision cited supra, we hold that the expenditure on replacement of machinery is revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee.

7. With regard to question (3), this Court, in the decision cited supra, explained the principle or object of introducing the concept of ''block of assets'' in detail. It is apposite to refer the following :

Regarding the argument relating to ''block of assets'', it is the claim of learned Counsel for the assessees that the said principle or object of introduction of the above concept is totally not applicable relating to the nature of expenditure incurred by the respondent. These provisions were introduced from 2nd April, 1987, as defined u/s 2(11) of the IT Act, 1961 and they are in operation on different field. It is stated that they were intended to replace the provisions on depreciation of capital assets. The block of assets concept was introduced with a view to streamline the excess depreciation allowed and to allow terminal depreciation. When the block of assets concept was introduced, the provisions relating to terminal depreciation and the profit result from the sale of assets, which were originally considered under Sections 32(1)(iii) and 41(2), were suitably amended to fall in line with the proposed simplification of the concept of block of assets. The circular describing the concept of block of assets is explained by the CBDT by Circular No. 469 dt. 23rd Sept., 1986 reported in (1987) 59 CTR (St) 9 : (1986) 162 ITR 21. In the instant case, no acquisition of any new asset, much less capital of any enduring advantage resulted to the assessee-respondent. The assessees replaced the worn out part of machineries without discontinuing their production activities. No claim for depreciation was ever made before any authorities either by the assessees or by the Revenue to consider the question as block of assets nor was there any necessity to do so. The Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. It is, therefore, stated that such question does not arise out of the order of the Tribunal for considering the same by this Court u/s 260A.

8. In the instant case also, the assessee had only replaced the pnemofil unit and blow room scutcher without discontinuing their production activities and we have already held that there was no acquisition of any new asset, much less capital of any enduring advantage. A perusal of the orders of the authorities below shows that no claim for depreciation was ever made before any authorities either by the assessee or by the Revenue to consider the question of block of assets nor was there any necessity to do so. Moreover, the Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. Therefore, applying the law laid down by the decision cited supra, such question does not arise out of the order of the Tribunal for considering the same by this Court u/s 260A of the Act.

9. In view of the decision cited supra, we find no error in the order of the Tribunal and the same requires no interference. Hence, no substantial question of law arises for consideration of this Court. Accordingly, the tax case appeals are dismissed. No costs. Consequently, connected TCMP is also dismissed.