

(2006) 01 MAD CK 0138

In the Madras High Court

Case No : Tax Case (Appeal) No"s. 1378 and 1379 of 2005 and TCMP No. 1190 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Sanco Trans Ltd.

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2006) 201 CTR 439 : (2006) 284 ITR 51

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

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These appeals have been filed by formulating the following questions of law for our consideration :

Tax Cases (Appeal) No. 1378 of 2005 :

(i) Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the deferred revenue expenditure claimed by the assessee on account of certain repair/renovation works is deductible as revenue expenditure in asst. yr. 1995-96, when the work was undertaken in the year 1993-94 ?

(ii) Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the deferred revenue expenditure claimed by the assessee on account of certain repair/renovation works is deductible as revenue expenditure on the ground that since the premises was leased, there could not be any enduring benefit ? and

(iii) Whether, on the facts and circumstances of the case, the Tribunal was right in dismissing the Department"s appeal without taking cognisance of two vital grounds :

(a) Validity of revised return in which the expenditure was claimed

(b) Claim in respect of expenditure incurred in an earlier year ?

Tax Cases (Appeal) No. 1379 of 2005 :

Whether, in the facts and circumstances of the case, the Tribunal was right in deleting the penalty imposed u/s 271(1)(c) when the AO had produced evidence to show that false claims had been made by the assessee in order to claim depreciation, additional depreciation and investment allowance that was not due to it, purposely reduce the income and evade tax ?

2. The assessment years are 1995-96 and 1984-85. The assessee claimed a deduction of deferred revenue expenditure incurred at their leased premises at the container freight station. They contended that the expenditure had been incurred for the purpose of black topping on the ground, repairs and levelling of platforms, godown, roads, etc. during the financial year 1993-94. The AO, while finding that the expenses had been incurred by the subsidiary company M/s Sanco Warehousing Ltd. and were transferred to the assessee's account by way of debit note, disallowed the expenditure on account of not having been incurred in the relevant previous year, as it was not claimed in the original return. With respect to asphaltting work of black topping, the AO was of the view that it was the capital expenditure, as it would give enduring benefit to the container freight station.

3. On appeal, the CIT(A) reversed the findings arrived at by the AO by giving a reason that the expenditure incurred in the previous year was not supported by any necessary evidence and in any case, that would not make any vital difference in the claim of the assessee, as the receipt of debit note in the previous year has not been disputed by the AO. For the above said reason, the first question of law now raised in these appeals stood reversed.

4. In respect of the claim of the Department that the expenditure incurred were capital in nature, the CIT(A) has given a reason that the payment made in the course and for the purpose of carrying on business or trading activity would be a revenue expenditure, even though the payment is of a large amount and has not been made periodically. The CIT(A) further found that the expenditure did not bring any capital asset into existence, but was necessary for renovating the existing assets for making the production more competitive and profitable and though the premises is a leased out premises, the work done is only for the purpose of smooth functioning of the business of the assessee. The findings of the CIT(A) have been confirmed by the Tribunal on appeal.

5. Learned senior Central Government standing counsel for the Department has contended that the expenditure towards black topping on the ground, repairs and levelling of platform, godown and roads during the year 1993-94 was incurred by M/s Sanco Warehousing Ltd. and it was transferred to the account of the assessee-company, by debit note dt. 31st March, 1995. In respect of other

question of law regarding enduring benefit, he has reiterated what was stated before the CIT(A) as well as the Tribunal.

6. We have heard the learned senior Central Government standing counsel and perused the materials on record.

7. We are of the view that the findings arrived by the CIT(A) that the expenditure incurred in the previous year is not supported by necessary evidence and in any case, it did not make any vital difference in the claim of the assessee, do not call for any interference. Further, the reasoning of the CIT(A) that the receipt of debit note in the previous year has not been disputed by the AO would also fortify the contention of the assessee. Likewise, the black topping on the ground and levelling of platform, godown, roads, etc. are for the purpose of smooth functioning of the business, though the property is a leased out property and it cannot be, at any stretch of imagination, considered to be an enduring benefit of capital expenditure. We do not find any question of law, much less substantial question of law, so as to entertain the appeals.

8. Accordingly, the Tax Case (Appeals) are dismissed. The issue is decided in favour of the assessee and against the Revenue. Consequently, the above TCMP is also dismissed.