(2007) 06 MAD CK 0074

In the Madras High Court

Case No : T.C. (A) No''s. 876 and 877 of 2007

Commissioner of Income Tax	APPELLANT
Vs	
TVS Lean Logistics Ltd.	RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:
Income Tax Act, 1961 — Section 32(1)

Citation : (2007) 212 CTR 523 : (2007) 293 ITR 432

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

Bench : Division Bench

Advocate : Pushya Sitaraman, S.C, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The Revenue has preferred these appeals on a vexed substantial question of law as to whether the expenditure on

construction of building in a leasehold premises would amount to revenue expenditure, contrary to the clear provisions of Explanation 1 to Section

32(1) of the Income Tax Act, under the following facts and circumstances of the case.

2.1. The relevant assessment years are 2001-02 and 2002-03 respectively. The assessee claimed the expenditure incurred by it on construction of

a building, concededly on leasehold land, as revenue in nature. But, the Assessing Officer treated it as capital expenditure by orders dated

23.3.2004 and 7.2.2005 respectively. Against the said orders, the assessee preferred appeals, which were, by common order dated 21.9.2005

dismissed by the Commissioner, upholding the order of the Assessing Officer.

2.2. Contending that Explanation 1 to Section 32(1) of the Act would cover the situations of construction on premises taken on lease, since the assessee was not the owner of the building, the expenditure could only be treated as revenue in nature, the assessee preferred further appeals

before the Tribunal. Appreciating the contention made on behalf of the assessee, the Tribunal allowed the appeal and held that the expenditure

incurred by the assessee on the construction of the building on the leasehold land was not attracted by Explanation 1 to Section 32(1) of the Act,

as it was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 1.4.1988 and therefore, the said

expenditure was revenue in nature. Hence, the present appeal raising the above mentioned substantial question of law.

3. Before proceeding further, it is apt to refer Explanation 1 of Section 32(1) of the Act.

32. Depreciation

(1) In respect of depreciation of -

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible

assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed -

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof

to the assessee as may be prescribed;

(ii)in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

...

Explanation 1 - Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee

holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on

the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the

building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

...

4.1. It is not in dispute that the assessee had put up the impugned construction of building only on the leasehold land and no building was taken on

lease by the assessee. Therefore, the fiction created by Explanation 1 that the building put up by him in the leasehold land or structure or work shall

be construed as if the same is owned by the assessee, is not applicable to the case of the assessee and the Explanation 1 to Section 32(1) of the

Act is not attracted to the instant case of the assessee at all.

4.2. Of course, an argument was advanced on behalf of the Revenue that the words ""where the business or profession is carried on in a building

not owned by him but in respect of which the assessee holds a lease or other right of occupancy"" would also include lands and would be read as

where the business or profession of the assessee is carried on in a land not owned by him but in respect of which the assessee holds a lease or

other right of occupancy"" and in such case, explanation 1 to Section 32(1) of the Act is squarely applicable to the instant case of the assessee. But,

we are unable to appreciate the said argument. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the

same in a different manner, only because of harsh consequences arising therefrom; and it is well known that the Court can iron out the creases but

it cannot change the texture of the fabric, cannot enlarge the scope of legislation or intention when the language of the provision is plain and

unambiguous, cannot add or subtract words to a statute or read something into it which is not there and cannot rewrite or recast legislation, vide

Nasiruddin and Others Vs. Sita Ram Agarwal, .

4.3. Similarly, there should be a literal rule of interpretation of a statute, which is the first and foremost principle of interpretation and where the

words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule and

even if the literal interpretation results in hardship or inconvenience, it has to be followed. The language employed in a statute is the determinative

factor of the legislative event and even assuming there is a defect or any omission in the words used in the legislature, the Court cannot correct or

make up the deficiency, especially when a literal reading thereof produces an intelligible result and any departure from the literal rule would really be amending the law in the garb of interpretation, which is not permissible and which would be destructive of judicial discipline, vide Raghunath Rai

Bareja and Another Vs. Punjab National Bank and Others, .

4.4. What constitutes a capital expenditure and what does not, to attract Explanation 1 to Section 32(1) of the Act depends upon the construction

of any structure or doing any work or in relation to and by way of renovation, extension or improvement to the building which is put up in a building

taken on lease by him for carrying on his business and profession of the assessee, but not in a case of construction of any structure or doing any

work or relation to where such building is put up/constructed for the purpose of business or the profession of the assessee in a land taken on lease

by the assessee. Because the assessee did not acquire a capital asset, viz. the land in the instant case, but have put up a construction of the building

only for the business advantage, with the result the entire construction cost is admissible as the revenue expenditure.

4.5. The Apex Court in L.B. Sugar Factory and Oil Mills (P) Ltd., Pilibhit Vs. Commissioner of Income Tax , U.P., Lucknow, held that the

construction of roads in the case of Sugar Mill as revenue expenditure. Similarly, contribution to the State Housing Board for construction of

tenements for the workers also held to be the revenue expenditure by the Apex Court in the case of COMMISSIONER OF INCOME TAX Vs.

BOMBAY DYEING and MANUFACTURING CO. LTD., .

4.6. Seeing through the pipelines of the above ratio in the facts and circumstances of the instant case, we do not see any substantial question of law

as raised by the Tribunal, for our consideration, as the Explanation 1 to

Section 32(1) of the Act is not attracted. Accordingly, these appeals are dismissed. Consequently, M.P. No. 1 of 2007 is also dismissed.