

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.07.2014

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE G.M.AKBAR ALI

T.C. (A) NOS. 978 TO 981 OF 2013
AND
M.P. NOS.1 OF 2014

The Commissioner of Income Tax
Trichy

.. Appellant in all the appeals

- Vs -

M/s.Aditya Ferro Alloys P Ltd.
No.242/2, Surakudi Village
Thirunallar, Karaikal.
appeals

.. Respondent in all the

TCA Nos.978 to 981 of 2013 u/s 260-A of the Income Tax Act filed against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 26.6.13 in ITA No.474, 840, 871 & 872/MDS/2013 for the assessment years 2005-2006 and 2008 to 2011.

For Petitioner

: Mr. J.Narayanasamy

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

In all these appeals, the following common question of law has been raised :-

“Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the expenditure on cast reusable cast iron moulds are to be allowed as revenue expenditure”.

2. The assessment years relevant for the purpose of disposing of the appeals are 2005-2006 (re-opened assessment), 2008-2009, 2009-2010 and 2010-2011. The respondent assessee is engaged in the business of manufacture of cast iron ingots using iron scrap and for the purpose of manufacture of ingots, they use cast iron moulds. These moulds are used for about 30 to 40 heats after which time it becomes brittle and develops cracks and not usable again. Therefore, the assessee has to scrap these moulds and purchase new moulds for the manufacture of cast iron ingots. The assessee initially claimed it as a depreciable asset. However, the assessee, thereafter, changed its stand and treated the mould purchase expenditure as revenue in nature and claimed deduction through profit and loss account. This was not accepted by the Assessing Officer, in all the original assessment orders. According to the Assessing Officer, the cast iron moulds should be treated only as capital expenditure and, accordingly, he allowed depreciation as applicable and rejected the assessee's claim for treating it as revenue expenditure.

3. Aggrieved by the said decision, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) on all the four assessment orders, viz., 2005-2006 (re-opened), 2008-2009, 2009-2010 and 2010-2011. The Commissioner (Appeals), placing reliance on the decision of the Income Tax Appellate Tribunal 'D' Bench, Chennai, in the assessee's own case for the assessment year 2004-2005, allowed the appeals recording the finding of the Tribunal, which is set out hereunder for better clarity :-

“Regarding the merits of the issue, we find that ingot moulds used by the assessee in its manufacturing process does not have a long shell life. As the moulding process undertaken by the assessee is in a high temperature, the pouring of the molten iron

in the moulds makes cracks and breaks in the moulds of and on by which the appellant is compelled to replace the moulds incessantly. It is true that the assessee had treated the purchase expenses of moulds as depreciable assets. But the rate of depreciation adopted by the assessee for the earlier assessment years was the rate prescribed for the moulds used in plastic and glass industries, later assessee made an empirical assessment of the nature and shell life of mould and found that they are almost in the nature of consumables as far as the industry of the assessee is concerned. On the basis of that factual finding, the assessee changed its method and treated the mould purchase expenditure as revenue in nature and claimed deduction through profit and loss account. When we examine the nature of the manufacturing process carried out by the assessee and the shell life of the moulds we find that assessee is justified in treating the concerned expenditure as revenue in nature for the reason that the moulds do not have enduring life. Assessee has to purchase the moulds on a regular basis as if it is a part of stores and spares. In such circumstances, claiming the expenditure as revenue cannot be held to be erroneous.”

5. Carefully considering the submissions of the appellant and respectfully following the decisions of the Hon'ble ITAT, 'D' Bench, Chennai, vide orders in ITA Nos.1437/MDS/09 dated 20.01.2011 and ITA No.826 & 827/MDS/2011 for Assessment years 2007-08 & 2004-05 dated 28.07.2011 in the appellant's own case, the addition made by the A.O. Treating the purchase of Cast Iron Ingot Mould as capital expenditure is not called for. Therefore, the addition is not warranted, and hence deleted.

6. In the result, the appeals for A.Y. 2005-06, 2008-09, 2009-10 & 2010-11 are ALLOWED.”

4. Aggrieved against the said order, the Revenue has filed appeals before the Tribunal in respect of the four assessment orders mentioned above and the Tribunal, relying upon its earlier decision, set out above, held as follows :-

“6. We have heard the submissions made by the representative of

both the sides and have also perused the orders of the authorities below as well as the orders of the Tribunal relied upon by the Id. AR of the assessee. A perusal of the order of the Tribunal in ITA No.1437/MDS/2009 for the A.Y. 2004-05 decided on 20-01-2011 shows that the issue in hand has already been adjudicated by the Tribunal. The Tribunal has held as under :-

“When we examine the nature of the manufacturing process carried out by the assessee and the shell life of the moulds we find that assessee is justified in treating the concerned expenditure as revenue in nature for the reason that the moulds do not have enduring life.”

In view of the findings of the co-ordinating Bench of the Tribunal which have been subsequently followed in assessee's own case in ITA No.826/Mds/2011 for the A.Y. 2007-08, we hold that the expenditure incurred on purchase of cast iron ingot moulds is revenue in nature. Accordingly, we uphold the findings of the CIT (Appeals) and dismiss all the four appeals of the Revenue.

7. As regards Cross Objection of the assessee for the A.Y. 2005-06 is concerned, the only issue raised is regarding re-opening. Since the appeal for A.Y. 2005-06 has already been decided on merits the Cross Objection has become merely academic. The Cross Objection is accordingly dismissed.

In the result, appeals of the Revenue and Cross Objection of the assessee are dismissed.”

Aggrieved against the said order of the Tribunal, the Revenue has come before this Court by filing the above appeals.

5. Heard Mr.J.Narayanasamy, learned standing counsel appearing for the appellant and perused the order of assessment of the lower authority, the order of the Commissioner (Appeals) as also the order of the Tribunal.

6. The question that is posed before this Court is as to *whether in the nature of manufacturing process carried out by the assessee, where the shell life of the cast iron ingot moulds, which is used for about 30 to 40 times and, thereafter, scrapped, could*

be taken as capital asset or a revenue asset.

7. Considering the nature of manufacturing process, the user of goods, the period of its shelf life and the nature of its use, which is having short shelf life, the appellate authority as well as the Tribunal have held that the goods in question, viz., **cast iron ingot moulds** are to be treated as revenue expenditure and not as capital expenditure, holding clearly that moulds do not have enduring life, which will be a parameter for considering the same as capital expenditure. The short shelf life of the **cast iron ingot moulds**, which is to be purchased on regular basis as if it is a part of the stores of spares was treated by the Tribunal as revenue expenditure and not capital expenditure. We find no ground to take a different view from the one taken by the Tribunal, nor counsel for the Revenue is able to point out any proposition of law contrary to the above finding of the Tribunal. Since the issue revolves around pure question of fact, there is no question of law, much less substantial question of law arising for consideration in these appeals.

8. For the foregoing reasons, we pass the following order:

(i) There is no material warranting interference with the order passed by the Tribunal.

(ii) All the appeals fail and the same are dismissed.

Consequently, connected miscellaneous petitions are closed.

(R.S.J.) (G.M.A.J.)
14.07.2014

Index : Yes
Internet : Yes
GLN

To

1. The Income Tax Appellate Tribunal
Madras A' Bench, Chennai.
2. Commissioner of Income Tax (Appeals)
Trichy.
3. The Addl. Commissioner of Income Tax
Thanjavur Range, Thanjavur.

R.SUDHAKAR, J.

AND
G.M.AKBAR ALI, J.

GLN

T.C. (A) NOS. 978 TO 981

OF 2013

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