

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष
**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2239/Mds/2015

& C.O.No.15/Mds/2016
(in ITA No.2239/Mds/2015)

निर्धारण वर्ष /Assessment year : 2010-2011

The Assistant Commissioner
of Income Tax,
Corporate Circle 3(2)
Chennai.

Vs.

M/s. Visteon Automotive
Systems India Pvt. Ltd,
Keelakaranai Village,
Malrosapuram Post,
Maraimalai Nagar,
Chengalpattu District,
Tamil Nadu 603 204.

(अपीलार्थी/Appellant)

**[PAN AAACM 6890R]
(Respondent/ Cross Objector)**

Department by
प्रत्यर्थी की ओर से /Respondent by

: Shri. A.V. Sreekanth, IRS, JCIT.
: Shri. N.V. Balaji, Advocate

सुनवाई की तारीख/Date of Hearing

: 19-12-2016

घोषणा की तारीख /Date of Pronouncement

: 21-12-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

These are appeal and cross objection filed by the Revenue and assessee respectively directed against an order dated 10.09.2015 of the Commissioner of Income-tax (Appeals)- 11, Chennai.

2. Appeal filed by the Department is delayed by three days. Condonation petition has been filed. Reason shown for the delay seems to be justified. Ld. Authorised Representative did not raise any serious objection. Delay is condoned. Appeal is admitted.

3. Facts apropos are that assessee engaged in the business of manufacturing and selling motor vehicle parts, had filed return of income for the impugned assessment year disclosing income of ₹1,41,43,14,595/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had debited a sum of ₹20,21,20,000/- as power and fuel charges. From the break-up of expenditure furnished by the assessee Id. Assessing Officer noted that the above sum included ₹5,61,20,000/- paid to one M/s. Ford India Pvt. Ltd. Assessee was required to justify the above payments. In reply, it was stated by the assessee that it had leased out a property from M/s. Ford India Pvt. Ltd, through a lease deed dated 15.01.2001 which was renewed on 15.06.2007. As per assessee, it was manufacturing parts/ accessories from the factory in the said leased property and M/s. Ford India Pvt. Ltd. was supplying electricity for the factory through an agreement called shared services agreement dated 08.06.2007. As per assessee, the said agreement was due for expiry on 31.12.2008 and M/s. Ford India Pvt. Ltd. had issued a termination notice on 10.04.2008 to the assessee, relying on

Article 13 of the agreement. M/s. Ford India Pvt. Ltd. intimated the assessee that it required electricity produced by it for its own expansion and therefore could not meet the needs of the assessee from 1st January, 2009. Assessee thereupon requested the M/s. Ford India Pvt. Ltd. to continue the supply of electricity and also agreed to fund a part of the additional infrastructure that was to be required to be installed by it for continuing the supply of electricity to the assessee. As per assessee, M/s. Ford India Pvt. Ltd. accepted the said request and required the assessee to pay a sum of ₹5,61,20,000/- being a part of the total cost of ₹20,21,20,000/- that was required for setting up the additional power infrastructure. Assessee had paid such sum and claimed such amount as revenue outgo u/s.37(1) of the Act. However, Id. Assessing Officer was of the opinion that the claim could not be allowed. According to him, additional power infrastructure created gave enduring benefit to M/s. Ford India Pvt. Ltd. and it was not a routine business expenditure. The said infrastructure facility was shown as an asset by the M/s. Ford India Pvt. Ltd. in its books of accounts. As per Id. Assessing Officer capital expenditure could not become a revenue expenditure just for a reason that it was incurred in connection with business activities or for efficiently carrying out day to day business. Further, as per Assessing Officer infrastructure installed by the M/s. Ford India Pvt. Ltd. was not wholly and

exclusively for the business of the assessee. As per Id. Assessing Officer even if assessee received electricity in future from M/s. Ford India Pvt. Ltd. it would be separately governed by fresh shared services agreements. Thus, he held that ₹5,61,20,000/- claimed by the assessee as revenue outgo could not be allowed. He disallowed the claim.

4. Aggrieved, the assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that the payment did not result in creation of any new asset or any enduring benefit. As per assessee, payment only ensured uninterrupted supply of electricity which would have been otherwise terminated by M/s. Ford India Pvt. Ltd. on 1st January, 2009. Id. Commissioner of Income Tax (Appeals) after going through the submission of the assessee, echoing the same view taken by the Id. Assessing Officer held that the outgo was capital expenditure. However, he held that it resulted in creation of an intangible asset for the assessee and assessee was eligible for depreciation thereon. Thus, he directed the Id. Assessing Officer to allow depreciation on the sum of ₹5,61,20,000/-.

5. Now before us, Revenue is assailing the order of the Id. Commissioner of Income Tax (Appeals) in so far as he directed allowance of depreciation treating the capital expenditure as resulting

in an intangible asset. On the other hand, assessee in its cross objection is aggrieved on the disallowance of the claim as capital expenditure.

6. Opening the arguments, Id. Departmental Representative submitted that creation of additional infrastructure for supplying electricity resulted in enduring benefit to M/s. Ford India Pvt. Ltd as well as the assessee. As per the Id. Departmental Representative this however did not result in creation of any intangible asset for the assessee. The asset remained in the books of M/s. Ford India Pvt. Ltd. Thus according to him, Id. Commissioner of Income Tax (Appeals) though he was correct in upholding the expenditure as capital outgo, erred in directing the Id. Assessing Officer to grant depreciation thereon.

7. Per contra, and in support of its cross objection, Id. Authorised Representative submitted that when the outgo did not create any asset for the assessee it was a revenue expenditure allowable u/s.37(1) of the Act.

8. We have considered the rival contentions and perused the orders of the authorities below. There is no dispute that there was an agreement between assessee and M/s. Ford India Pvt. Ltd by which latter leased out a property to the assessee. There is also no dispute

that M/s. Ford India Pvt. Ltd was to supply electricity to the assessee for the factory in the leased property based on a shared services agreement. That M/s. Ford India Pvt. Ltd had given notice to the assessee for terminating the shared supply agreement w.e.f. 1st January, 2009 is also not doubted. Electricity was an essential input for carrying on the manufacturing activity of the assessee and there can be no two opinions on this. To ensure supply of uninterrupted electricity, assessee had to agree with M/s. Ford India Pvt. Ltd to part finance the total cost of additional power infrastructure to be established by M/s. Ford India Pvt. Ltd. M/s. Ford India Pvt. Ltd would not have supplied electricity after 1st January, 2009 but for assessee agreeing to part finance the cost of the project for establishing additional power infrastructure. However, it is also an admitted position that additional power infrastructure created was the sole property of M/s. Ford India Pvt. Ltd and assessee had no ownership over any part of the said asset. The only benefit assessee derived was supply of uninterrupted electricity, without which it could have not functioned. In this situation, the said expenditure in our opinion can only be treated as revenue expenditure which ensured continued electricity supply. The payment did not result in any enduring benefit but only enabled the assessee to carry on its day to day activities. Just because additional power infrastructure was an asset in the hand of

the M/s. Ford India Pvt. Ltd, we cannot say that amount given by the assessee to M/s. Ford India Pvt. Ltd was a capital outgo. The expenditure was incurred wholly and exclusively for the business of the assessee and it did not create any asset for the assessee. It only ensured continued supply of electricity without interruption. In such circumstances, in our opinion, the expenditure was rightly claimed by the assessee as revenue outgo. Lower authorities in our opinion fell in error in disallowing the claim. We therefore, set aside the orders of the authorities below and direct the Id. Assessing Officer to allow the claim of the assessee.

9. In the result, cross objection of the assessee are allowed. Appeal of the Revenue has effectively become infructuous and is dismissed.

Order pronounced on Wednesday, the 21st day of December, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st December, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 3. आयकर आयुक्त (अपील)/CIT(A) 5. विभागीय प्रतिनिधि/DR

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF