

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1932/Chny/2017

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

(अपीलार्थी/Appellant)

M/s Aremkay,  
63, North Car Street,  
Tirunelveli – 627 006.

PAN : AAHFA 9459 J  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1934 & 1935/Chny/2017

निर्धारण वर्ष / Assessment Years : 2008-09 and 2009-10

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

(अपीलार्थी/Appellant)

Shri N. Viswanath,  
(Legal heir of  
Late K.V. Nalliappan)  
37, North Car Street,  
Tirunelveli – 627 006.

PAN : AAJPN 8275 H  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1936/Chny/2017

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of  
Income Tax, Circle – 1,  
Nellai City Centre, Rahmath Nagar,  
Tirunelveli.

PAN :

(अपीलार्थी/Appellant)

M/s Viswams,  
176, Trivandrum Road,  
Tirunelveli – 627 006.

PAN : AADFV 6501 A  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nandakumar, JCIT  
प्रत्यर्थी की ओर से/Respondent by : Shri R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 14.05.2018

घोषणा की तारीख/Date of Pronouncement : 12.07.2018

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the Revenue in respect of three independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals) -3, Madurai, dated 16.05.2017 pertaining to assessment years 2008-09 and 2009-10. Since common issue arises for consideration in these appeals, we heard all these appeals together and disposing of the same by this common order.

2. The only issue arises for consideration in these appeals is whether the expenditure incurred by the assessee on the lease premises is a revenue expenditure or capital expenditure.

3. Shri V. Nandakumar, the Ld. Departmental Representative, submitted that all the assesseees form part of RMKV group of concerns, which is engaged in retail trading in textile. According to the Ld. D.R., the assessee took the premises on lease and incurred

major expenditure in bringing the same into a showroom for its retail business. Therefore, according to the Ld. D.R., the expenditure incurred by the assessee has to be construed as capital in nature under Explanation 1 to Section 32(1) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., the expenditure was incurred to make the building a functional one for the business of the assessee, therefore, it would fall in the capital field. Hence, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that during the year under consideration, the premises was taken on lease and the assessee incurred expenditure to make it fit for doing their retail business. According to the Ld. counsel, the expenditure incurred by the assessee was claimed as revenue expenditure. However, the Assessing Officer treated the same as capital in nature. According to the Ld. counsel, the expenditure incurred by the assessee is only for the purpose of expansion of their existing business. The expenses were incurred for the purpose of making the lease premises fit for carrying on the business. According to the Ld. counsel, expenditure is a

prerequisite for carrying on the business effectively and profitably. For the assessment year 1995-96, when the similar issue came before this Tribunal, this Tribunal by placing reliance on the judgment of Kerala High Court in Joyallukas India Pvt. Ltd. v. ACIT (2016) 282 CTR 551, found that the expenditure incurred by the assessee irrespective of creating enduring benefit or advantage even if it is profit earning effort, unless at the end of the term of the lease, the item on which the expenditure was spent could be retrieved by the assessee, it shall not amount to capital expenditure. The Kerala High Court reversed the decision of Cochin Bench of this Tribunal on identical issue. The Kerala High Court has also placed its reliance on the judgment of Apex Court in Empire Jute Co. Ltd. v. CIT (1980) 124 ITR 1. Therefore, according to the Ld. counsel, when the expenditure remains in the revenue field, the provisions of Explanation 1 to 32 of the Act would not be applicable to the facts of the case, therefore, the CIT(Appeals) has rightly held the expenditure as revenue expenditure.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee took a building on lease and incurred expenditure to

make it fit for running retail showroom in textile. The assessees claim that it is a revenue expenditure. However, the Revenue finds that the expenditure incurred by the assessee is capital in nature, therefore, it cannot be allowed in view of Explanation 1 to Section 32 of the Act. The Assessing Officer as well as the CIT(Appeals) extracted in their impugned order the nature of work carried on by the assessees. As rightly found by the Kerala High Court, after expiry of lease period, the expenditure incurred by the assessees could not be retrieved at all. In fact, on identical situation, the Cochin Bench of this Tribunal in the case of Joyallukas India Pvt. Ltd. found a similar expenditure as capital expenditure since the assessee expanded profit earning apparatus. The Kerala High Court reversed the order of the ITAT, Cochin Bench while holding that the expenditure could not be retrieved by the assessee irrespective of enduring benefit or advantage, even if it is a profit earning effort, it cannot be construed to be a capital expenditure. Therefore, it has to be allowed as revenue expenditure. This judgment of Kerala High Court was followed in the assessee's own case for assessment year 1995-96. Even though this Tribunal found an identical expenditure was revenue expenditure, the

Assessing Officer simply ignored the order of this Tribunal by observing that the Department has not accepted the decision of ITAT and it was under challenge before the higher forum. For the assessment years 2002-03 and 2003-04 also the Tribunal found that an identical expenditure has to be allowed as revenue expenditure. In fact, the Tribunal placed its reliance on the judgment of jurisdictional High Court in Hari Vignesh Motors Pvt. Ltd.

6. We have carefully gone through the order of the CIT(Appeals). The CIT(Appeals), by placing reliance on the order of this Tribunal in the assessee's own case and judgment of Kerala High Court in Joyallukas India Pvt. Ltd. (supra) and the judgment of Delhi High Court in CIT v. HI Line Pens Pvt. Ltd. (2008) 306 ITR 182, found that the expenditure incurred by the assessee towards renovation of rental premises is not acquisition of capital asset but for the purpose of business of the assessee, therefore, it has to be allowed as revenue expenditure. Since the CIT(Appeals) has followed the order of this Tribunal, judgments of Kerala High Court and Delhi High Court and decided the issue accordingly, this

Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. All the appeals filed by the Revenue stand dismissed.

Order pronounced on 12<sup>th</sup> July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 12<sup>th</sup> July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Madurai
4. Principal CIT-2, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.