

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री रमित कोचर, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Ramit Kochar, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 201/Chny/2017
निर्धारण वर्ष/Assessment Year: 2005-06

The Deputy Commissioner of
Income Tax,
Corporate Circle 2,
Madurai.

M/s. Ramco Industries Limited,
Vs. No. 47, P S K. Nagar,
Rajapalayam 626 108.

[PAN:AAACR5284J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. Nos. 92, 93 & 94/Chny/2017
निर्धारण वर्ष/Assessment Years: 2001-02, 2002-03 & 2005-06

M/s. Ramco Industries Limited,
No. 47, P S K. Nagar,
Rajapalayam 626 108.

Vs. The Assistant Commissioner of
Income Tax, Circle 1,
Virudhunagar.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri Srinivasa Rao Vana, Addl. CIT
Assessee by : Shri J. Prabhakar, C.A.
सुनवाई की तारीख/ Date of hearing : 21.11.2019
घोषणा की तारीख /Date of Pronouncement : 26.12.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Three appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 1, Madurai, all dated 03.10.2016 relevant to the assessment years 2001-02, 2002-03 and 2005-06.

The Revenue also filed an appeal against the order of the Id. CIT(A) for the

assessment year 2005-06. The effective common ground raised in the appeals of the assessee is that the Id. CIT(A) has erred in confirming the disallowance of expenditure claimed towards cost of machinery in terms of section 37 of the Income Tax Act, 1961 ["Act" in short]. Though, different machinery in different assessment years are involved, the expenditure claimed by the assessee was under section 37 of the Act, we take the appeal for the assessment year 2001-02 as lead case to deal the issue.

2. Brief facts leading to the case are that the assessee replaced the following machinery at a cost of ₹.5,33,93,930/-:

Auto coners 2 Nos.	₹. 2,75,97,727/-
Draw frames 2 Nos.	₹. 65,82,139/-
770 KVA DG Set	₹. 2,10,14,065/-
Total	<u>₹. 5,33,93,930/-</u>

The assessee, though capitalized the above expenditures in its books of account, but claimed as revenue expenditure. Further, the assessee has claimed that the entire machinery in the textile mill has to be considered as a single machine and replacement of any intermediary machine has to be treated as replacement of spares and allowed as current repairs. However, the Assessing Officer observed that the above machineries are separate machines by themselves and the expenditure incurred in the purchase of the machinery is capital in nature. It was also observed that the assessee derived advantage of enduring nature by incurring this expenditure. Accordingly, by allowing eligible depreciation, the balance cost of replacement of machinery was brought to tax.

On appeal, by confirming the addition in respect of DG set, the Id. CIT(A) allowed the claim in respect of auto coners and draw frames. On further appeal by the Department, the Tribunal set aside the issue in respect of auto coners and draw frames to the file of the Assessing Officer. Vide order under section 143(3) r.w.s. 254 of the Act, the Assessing Officer passed the impugned order by treating the expenditure on replacement of auto coners and draw frames as capital expenditure as in the original order. On being aggrieved, the assessee preferred appeal before the Id. CIT(A). By following the decision in the case of CIT v. Sri Mangayarkarasi Mills Ltd. 315 ITR 114 (SC), the Id. CIT(A) confirmed the disallowance of ₹.2,83,32,382/-.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the authorities below have failed to consider and give proper effect to the directions of the ITAT in its order in I.T.A. No. 3293/Mds/2004 dated 28.02.2009, wherein, the Tribunal has remitted the matter back to the file of the Assessing Officer to follow the judgement of Hon'ble Supreme Court in the case of CIT v. Ramaraju Surgical Cotton Mills Ltd. 234 ITR 328. It was further submission that the case law relied on by the Id. CIT(A) in the case of CIT v. Sri Mangayarkarasi Mills Ltd. in 315 ITR 114 is unrelated to the facts in assessee's case. It was further submission that having accepted that there is no increase in production capacity and no cost reduction as has been held in the case of Prabhu Spinning Mills Pvt. Ltd. in

ITA No. 2902/Mds/2005 dated 30.11.2007, the Id. CIT(A) was not justified in holding that the cost of replacement of machinery is capital expenditure and prayed for deleting the addition made by the Assessing Officer.

4. Per contra, the Id. DR has submitted that the claim of the assessee to consider the entire machinery in the textile mill as a single machine and replacement of any intermediary machine has to be treated as replacement of spares and should be allowed as current repairs was totally against the judgement of the Hon'ble Supreme Court in the case of CIT v. Sri Mangayarkarasi Mills Ltd. (supra). It was further submission that the Id. CIT(A) has clearly distinguished the case law of Chennai Benches of the Tribunal in the case of Prabhu Spinning Mills Pvt. Ltd. (supra), which has no application to the facts of the assessee's case and pleaded for confirming the addition.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. It is a second round of litigation. By and large, the claim of the assessee is that the entire machinery in the textile mill has to be considered as a single machine and replacement of any intermediary machine has to be treated as replacement of spares and allowed as current repairs. In first round, the Tribunal vide its order dated 28.02.2009 remitted the matter back to the file of the Assessing Officer with the following directions:

9. *We have heard the rival submissions. The assessee had claimed deduction under section 37 of the Act. Both the parties agreed that the issue can be examined on the touchstone of the principle laid down by the Hon'ble Apex Court in the case of CIT v. Ramaraju Surgical Cotton Mills, 234 ITR 328. We, therefore, in the interest of justice, set aside the impugned order and restore the matter to the file of the Assessing Officer with a direction to decide it afresh in accordance with law after providing adequate opportunity to the assessee of being heard."*

6. On perusal of the decision in the case of CIT v. Ramaraju Surgical Cotton Mills 294 ITR 328 (SC), we find that without expressing any opinion on the merits, the Hon'ble Supreme Court remanded the matters to the Commissioner (Appeals) with a direction to decide them uninfluenced by the decision of the Madras High Court, which was relied on by the assessee(s). Accordingly, since in the first round, the Tribunal remitted the matter to the file of the Assessing Officer to decide the issue in line with the decision of the Hon'ble Supreme Court, by following the latest decision in the case of CIT v. Sri Mangayarkarasi Mills Ltd., wherein, it was held that the replacement of machinery should be treated as capital expenditure and it cannot be claimed as revenue expenditure, after reducing the addition confirmed by the Id. CIT(A), balance addition to the extent of ₹.2,83,32,382/- was brought to tax. We find that it is relevant to reproduce the relevant findings of the Hon'ble Supreme Court in the case of CIT v. Sri Mangayarkarasi Mills Ltd. (supra):

"The entire textile mill machinery for spinning yarn cannot be regarded as a single asset, replacement of parts of which can be considered to be for the mere purpose of "preserving or maintaining" the asset. All parts put together constitute the production process and each separate machine part is an

independent entity. Replacement of such an old machine part with a new one would constitute the bringing into existence of a new asset in place of the old one and not repair of the old existing machine. In the case of textile machinery repair of a machine can at best amount to a repair made to the process of manufacture of yarn and cannot be said to be "current repairs" within the meaning of section 31 of the Income-tax Act, 1961."

7. As per the above decision of the Hon'ble Supreme Court, it is clear that the replacement of entire machinery in the textile mill cannot be claimed as "current repairs" by holding that each machine in a textile mill is part of the integrated process of manufacture of yarn and is integrally connected to the other machines in the mill for production of the final product. However, this interconnection does not take away the independent identity and distinct function of each machine. Thus, each machine in a textile mill should be treated independently as such and not as a mere part of an entire composite machinery of the spinning mill. By following the above decision of the Hon'ble Supreme Court, the Id. CIT(A) confirmed the disallowance of ₹.2,83,32,382/-. Further, while dealing with the issue of whether each machine in a textile mill is an independent item or merely a part of a complete spinning mill, the Hon'ble Supreme Court has observed as under:

"The first issue that needs to be resolved is whether each machine in a textile mill is an independent item or merely a part of a complete spinning mill, which only together are capable of manufacture, and there is no intermediate marketable product produced. In our view, this issue has been satisfactorily answered by the recent decision of this court in CIT v. Saravana Spinning Mills P. Ltd. [2007] 293 ITR 201 (SC). In that case this court has held unambiguously that 'each machine in a segment of a textile mill has an independent role to play in the mill and the output of each division is different from the other.' Dealing with a ring frame in a textile mill, this

court has held that it is an 'independent and separate' machine. Further, it is accepted that each machine in a textile mill is part of the integrated process of manufacture of yarn and is integrally connected to the other machines in the mill for production of the final product. However, this interconnection does not take away the independent identity and distinct function of each machine. Thus, each machine in a textile mill should be treated independently as such and not as a mere part of an entire composite machinery of the spinning mill. As stated above, it can at best be considered part of an integrated manufacture process employed in a textile mill."

7.1 The first argument raised by the assessee before the Tribunal that the authorities below have failed to consider and give proper effect to the directions of the ITAT to follow the judgement of Hon'ble Supreme Court in the case of CIT v. Ramaraju Surgical Cotton Mills Ltd. stands ruled out since in that decision it was directed to decide the issues uninfluenced by the decision of the Madras High Court, which was relied on by the assessee(s).

7.2 With regard to the second point for consideration that the entire machinery in the textile mill has to be considered as a single machine and replacement of any intermediary machine has to be treated as replacement of spares and allowed it as current repairs also stands ruled out since the Hon'ble Supreme Court in the case of CIT v. Sri Mangayarkarasi Mills Ltd. (supra) has held that the entire textile mill machinery for spinning yarn cannot be regarded as a single asset.

7.3 With regard to the third point for consideration to follow the decision of ITAT in the case of Prabhu Spinning Mills Ltd., the Id. CIT(A) has clearly

distinguished and confined to the fact that in that case the existing manual cone-winders had become obsolete and thereby, the assessee replaced by automatic cone-winders, whereas in the present case in hand, the assessee only auto cone winders were placed by the same auto cone winders and more so same in the case of draw frames. Thus, the arguments of the assessee stands ruled out.

8. We find that in the case of Assam Bengal Cement Co. Ltd. v. CIT 27 ITR 34, the Hon'ble Supreme Court has categorically held that in case where the expenditure is made for the initial outlay or for extension of a business or a substantial replacement of the equipment, there is no doubt that it is capital expenditure. It was further held that a capital asset of the business is either acquired or extended or substantially replaced and that outlay whatever be its source whether it is drawn from the capital or the income of the concern is certainly in the nature of capital expenditure.

8.1 Moreover, by following the above decision of the Hon'ble Supreme Court in the case of CIT v. Sri Mangayarkarasi Mills P. Ltd. (supra), in the case of CIT v. Sarvaraya Textiles Ltd. 332 ITR 553 (AP), the Hon'ble Andhra Pradesh High Court has decided the issue in favour of the Revenue by holding that replacement of an old machine with a new one would constitute the bringing into existence of a new asset in the place of the old one, and not repair of the old and existing machine Further, it was also held that a new asset in a textile

mill gives the purchaser an enduring benefit of better and more efficient production over a period of time and thus, a new asset, or a new/different advantage, would not amount to “current repairs”.

8.2 The Id. Counsel for the assessee has relied on the decision in the case of K.P.R. Spinning Mills (P) Ltd. v. ITO in I.T.A. No. 1873/Mds/2016 dated 14.02.2017, wherein, the Id. DR has submitted that the expenditure incurred by the assessee has to be capitalized and at the best the assessee may claim depreciation as per the provisions of law. Referring to the judgment of the Apex court in CIT v. Saravana Spinning Mills (2007) 293 ITR 201, the Id. DR submitted that the machinery / machine in the segment has to be considered as independent machinery since the same plays independent role. Therefore, replacement of machinery in the textile mill cannot be construed as mere replacement of part of the machinery. According to the Id. DR, what was replaced by the assessee is independent machinery in the textile mill. Therefore, the assessee has brought into existence of new capital asset with enduring benefit. Therefore, there is a commercial advantage for the assessee which is definitely in the capital field. Therefore, the Assessing Officer has rightly disallowed the claim of the assessee. It was further submission of the Id. DR that in the case of Sri Mangayarkarasi Mills P. Ltd. (supra) the Hon'ble Apex court found that the machine in a segment of textile mill has an independent role to play and output of each division is different from one another. Dealing with ring frame in the textile mill, the Apex court found that the ring frame in a

textile mill is independent machinery. Therefore, the CIT (Appeals) found that the Assessing Officer has rightly disallowed the claim of the assessee. However, by overlooking the above submissions of the Id. DR made in support of the decisions of the Hon'ble Supreme Court, upon giving any solitary findings on the submissions of the Id. DR or distinguishing the case law, the Tribunal has observed that merely because there was efficiency in running the machinery, this Tribunal is of the considered opinion that alone cannot be a reason to disallow the claim of the assessee was not supported by any decision. The other case law relied on by the assessee has no application to the facts of the case in view of the decision of the Hon'ble Supreme Court in the case of CIT v. Sri Mangayarkarasi Mills P. Ltd. (supra).

9. We are of the considered opinion that the expenditure incurred for acquiring or replacing any machinery to run a factory or mill should be treated as capital expenditure in view of the decision of the Hon'ble Supreme Court in the case of Sri Mangayarkarasi Mills P. Ltd. (supra) wherein salient findings are summarised as under:

- ❖ Placing reliance on the decision of Supreme Court in the case of Saravana Spinning Mills P. Ltd. [(2007) 293 ITR 201], it held that each machine in a textile mill has an independent role to play in the mill and each machine is part of the integrated process of manufacture of yarn and is integrally connected to the other machines in the mill. However, this interconnection does not take away the independent identity and distinct function of each machine. Replacement of the machine can at best amount to a repair made to the process of manufacture of yarn.

- ❖ Each machine in a textile mill should be treated independently and not as a mere part of an entire composite machinery of the spinning mill.
- ❖ Replacement of an old machine with a new one would constitute the bringing into existence of a new asset in place of the old one and not repair of the old and existing machine. It therefore cannot amount to current repairs.
- ❖ Expenditure incurred by the assessee was capital in nature as it amounted to enduring advantage for the business in the form of efficient production over a period of time.
- ❖ Though accounting practices may not be the best guide in determining the nature of expenditure, they are indicative in nature.

Under the above facts and circumstances as well as in view of the decision of the Hon'ble Supreme Court in the case of CIT v. Mangayarkarasi Mills P. Ltd. (supra), we sustain the addition confirmed by the Id. CIT(A) for the assessment year 2001-02.

10. On an identical issue in similar facts and circumstances, our above decision shall apply for the assessment years 2002-03 and 2005-06 against the claim of disallowance of cost of replacement of textile mill equipment viz., Carding Machine for the assessment year 2002-03 and four textile mill equipment of (a) Elite compact set, (b) Elite twist compact set, (c) Carding Machine & Comber. Accordingly, the addition confirmed by the Id. CIT(A) on this issue in the assessment years 2002-03 and 2005-06 also stands sustained. In I.T.A. No.94/Chny/2017 (AY 2005-06), the assessee also raised another issue of disallowance made under section 14A of the Act. However, in the

grounds of appeal, the Id. Counsel has made an endorsement that grounds Nos. 10 & 11 “not pressed”. Thus, the said ground is dismissed as not pressed.

11. Coming to the appeal filed by the Revenue for the assessment year 2005-06 [I.T.A. No. 201/Chny/2017] is concerned, at the time of hearing the Id. Counsel for the assessee has submitted that the tax effect in this appeal filed by the Revenue are less than the monetary limit of ₹.50,00,000/- fixed by the CBDT to file an appeal by the Revenue before the Tribunal as per the CBDT Circular No. 17/2019, dated 08.08.2019. The Id. DR fairly conceded the submissions made by the Id. Counsel for the assessee. Being so, the Revenue authorities are precluded from filing the appeal before the Tribunal, since the tax effect is less than ₹.50,00,000/- in this appeal. Thus, the appeal filed by the Revenue is liable to be dismissed as not maintainable and accordingly, the appeal filed by the Revenue is dismissed.

12. In the result, all the appeals filed by the assessee are dismissed and the appeal filed by the Revenue also dismissed.

Order pronounced on the 26th December, 2019 in Chennai.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 26.12.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.