

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. 134/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Watertec (India) Pvt. Ltd.,
(Formerly Watertec Systems
(India) Private Limited),
Gopal Bagh, 1060, Avinashi Road,
Coimbatore – 641 018.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 1,
Coimbatore.

PAN : AAACW 1645 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 30.03.2016

घोषणा की तारीख/Date of Pronouncement : 22.04.2016

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Coimbatore, dated 16.10.2015 and pertains to assessment year 2009-10.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee-company is engaged in the business of manufacture of taps, showers, valves, etc. During the course of assessment proceedings, the assessee-company claimed depreciation on the plant and machinery and molds at 30%. Subsequently, a revised return was filed claiming depreciation at the rate of 100%. Since the assessee claimed excess depreciation at 100%, the assessment was reopened by issuing notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the Assessing Officer disallowed the claim of depreciation at the rate of 100% on the molds on the ground that these items form part of plant and machinery, therefore, it has to be capitalized and the Assessing Officer allowed only normal depreciation at the rate of 30%. Placing reliance on the judgment of Madras High Court in CIT v. TVS Motors Limited (2014) 364 ITR 1, the Ld.counsel submitted that dies and molds are only to replace the worn out dies and molds. Molds and dies are attached to the machinery like designs specification and they are not independent of plant and machinery. According to the Ld. counsel, molds and dies are part of machinery. Once the molds are worn out, the machinery cannot function on its own. Therefore, according

to the Ld. counsel, even though the assessee claims depreciation at the rate of 100% in view of the judgment of Madras High Court in TVS Motors Limited (supra), according to the Ld. counsel, the entire expenditure has to be allowed as current repairs under Section 31 of the Act. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the CIT(Appeals) confirmed the order of the Assessing Officer on the ground that the replacement of molds would bring a new asset into existence, therefore, it is an enduring benefit to the assessee. According to the Ld. counsel, no new asset came into existence by replacing the worn out molds in the machinery. In fact, the existing plant and machinery was maintained by replacing the worn out molds. Therefore, the expenditure has to be necessarily treated as current repairs in the light of the judgment of Madras High Court in TVS Motors Limited (supra). Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the assessee replaced the molds and had claimed depreciation at the rate of 30% in the original return. By filing subsequent revised return, the assessee has

claimed the same at the rate of 100%. Therefore, the Assessing Officer reopened the assessment after issuing notice under Section 148 of the Act. According to the Ld. D.R., replacement of molds in the plant and machinery cannot be construed as current repairs as held by the Apex Court in CIT v. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201. A similar view was taken by the Apex Court in CIT v. Sri Mangayarkarasi Mills P. Ltd. (2009) 315 ITR 114. According to the Ld. D.R., the basic test is whether the expenditure was incurred to preserve and maintain an already existing plant and machinery. In this case, according to the Ld. D.R., it is not a repair of the machinery, it is a replacement of molds, therefore, the replacement of molds amount to enduring advantage to the business of the assessee. Hence, according to the Ld. D.R., the expenditure incurred by the assessee in replacing the molds would fall in the capital field. The expenditure incurred by the assessee for bringing into existence a new asset or enduring benefit to the assessee amount to capital expenditure as held by the Apex Court in Lakshmiji Sugar Mills (P.) Co. v. CIT (1971) 82 ITR 376. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly found that the assessee obtained enduring benefit by replacing the molds, therefore, the expenditure cannot be allowed as current

repairs under Section 31 of the Act. The assessee is also not entitled for depreciation at the rate of 100%. The normal rate for plant and machinery is only 30% which was already allowed by the Assessing Officer. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly is engaged in the business of manufacturing of taps, showers, valves, etc. The assessee claimed that molds in the plant and machinery were replaced and the cost of the replacement of molds was initially capitalized and the assessee claimed depreciation at the rate of 30%. Subsequently, by way of a revised return, the assessee claimed depreciation at the rate of 100%. The Assessing Officer found that the claim of depreciation at the rate of 100% on the molds cannot be allowed since molds would form part of plant and machinery and it was already capitalized. Therefore, the Assessing Officer allowed normal depreciation at the rate of 30%. During the course of appeal proceeding, the assessee claimed before the CIT(Appeals) that it has to be allowed as

revenue expenditure / current repairs under Section 31 of the Act. The CIT(Appeals), by placing reliance on the judgment of Apex Court in Sri Mangayarkarasi Mills P. Ltd. (supra) and the judgment of Apex Court in Saravana Spinning Mills P. Ltd. (supra), found that there is enduring benefit to the assessee by replacing the molds, therefore, the same cannot be allowed as revenue expenditure. Accordingly, the CIT(Appeals) confirmed the order of the Assessing Officer wherein depreciation was at the rate of 30%.

5. Now, coming to the contention of the Ld.counsel for the assessee before this Tribunal that in view of the judgment of Madras High Court in TVS Motors Limited (supra), the expenditure incurred by the assessee for replacing the molds has to be allowed as current repairs under Section 31 of the Act. The question arises for consideration is whether the assessee repaired the existing part of the plant and machinery, which was malfunctioning, thereby requiring repair to that machinery and plant, etc? As observed by Apex Court in Saravana Spinning Mills P. Ltd. (supra), replacement cannot be a current repair. The terms "replacement" and "current repairs" cannot go hand in hand. Therefore, we have to examine whether replacement of molds is a replacement or for repairing the

existing part of the machinery. Both the authorities below had no occasion to consider the judgment of Apex Court in TVS Motors Limited (supra). The Madras High Court in TVS Motors Limited (supra) examined this issue and found that molds and dies attached to the machinery are like designs specification and are not independent of the plant and machinery. The Madras High Court further observed that molds and dies are parts of the machinery. Therefore, once the dies are worn out, the machinery cannot turn out the product to the business specifications and this has to be obtained only on a replacement of the dies and moulds. The Madras High Court has also considered the judgment of Apex Court in Saravana Spinning Mills P. Ltd. (supra), Lakshmiji Sugar Mills (P.) Co. (supra) and Sri Mangayarkarasi Mills P. Ltd. (supra). Ultimately, the Madras High Court found that the cost of replacement of molds has to be allowed as current repairs under Section 31 of the Act. This Tribunal is of the considered opinion that the judgment of Madras High Court in TVS Motors Limited (supra) is squarely applicable to the facts of the case. Therefore, the cost of replacement of the molds in the plant and machinery has to be treated as current repairs under Section 31 of the Act. In view of the above, this Tribunal is unable to the orders of the lower

authorities and accordingly, the same are set aside. The Assessing Officer is directed to allow the cost of replacement of molds as current repairs under Section 31 of the Act.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on 22nd April, 2016 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 22nd April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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