

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.700/Mds/2014
निर्धारण वर्ष /Assessment year : 2008-2009

The Continental Enterprise
621, 1st floor, SIRE Mansion,
Anna Salai,
Chennai 600 006.

Vs. The Income Tax Officer,
Business Ward XV(2),
Chennai

[PAN AACFT 8487A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Sridhar, Advocate
: Shri. P. Radhakrishnan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing

: 31-08-2015

घोषणा की तारीख /Date of Pronouncement

: 11-09-2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-V, Chennai, dated 02.12.2013 for the assessment years 2008-2009.

2. The assessee has raised the following grounds of appeal:-

"2. The CIT (Appeals) erred in confirming the disallowance of ₹18,98,962/- being the expenses incurred under various dates in the leasehold lands in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that having noticed the nature of expenses incurred on the factual matrix of the case and further having noticed the decisions rendered by the Jurisdictional High Court, the action to classify such expenses as capital resulting in the disallowance of such sum in the computation of taxable total income was wrong, erroneous, unjustified, incorrect and not sustainable in law.

4. The CIT (Appeals) failed to appreciate that the provisions especially explanation (1) below section 32 of the Act was wrongly understood by the Assessing Officer and ought to have appreciated that misreading of the said provisions on the factual matrix of the case would vitiate the action in relation thereto.

5. The CIT (Appeals) went wrong in recording the findings in this regard in para 4 of the impugned order without assigning proper reasons and justification.

6. The CIT (Appeals) erred in sustaining the disallowance of loading and unloading charges aggregating to ₹82,132/- in the computation of taxable total income without assigning proper reasons and justification.

7. The CIT (Appeals) erred in sustaining the disallowance of tractor rent amounting to ₹1,35,000/- in the computation of taxable total income without assigning proper reasons and justification.

8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law."

3. The facts of the case are that the assessee is a manufacturer of coir products, which requires large space for processing. Hence, the assessee took on lease two plots of land one measuring about 33.37 cents (14,536 sq.ft) and the other measuring about 32.76 cents (14,270 sq.ft) at SIDCO industrial estate, Achamangalam Village, Bargur, Krishnagiri Taluk, Tamilnadu. Each plot had a small shed of about 2,066 sq.ft as more covered space was required for processing the coir, the assessee constructed temporary sheds with metal sheet roofing and laid concrete flooring so that the material stored was not damaged due to rain water. As there was not fencing around the plot, the assessee also erected barbed fencing all around the plot. Thus, the following expenses incurred on leasehold land were charged as revenue expenditure:-

01.	Fencing	:	₹1,89,262/-
02.	Temporary shed	:	₹8,88,843/-
03.	Compound wall	:	₹1,00,272/-
04.	Flooring Expenses	:	₹7,20,585/-
	Total		₹18,98,962/-

The Assessing Officer disallowed the above expenses as capital in nature and allowed only depreciation. The Assessing Officer further observed that in respect of capital expenditure incurred by the assessee on lease hold premises, only depreciation is admissible. There

is no 'response' that the fencing, temporary shed, compound etc were constructed on leasehold premises. It is pertinent to note that by incurring the said expenditure, the assessee has acquired an asset which in turn increases the enduring capacity to the assessee in the business. In this context, the assessee contention that the expenditure incurred thereon should be allowed as revenue expenditure is not justified. Hence, the Assessing Officer disallowed the revenue expenditure claimed after allowing due depreciation as laid down in Explanation 1 to sec. 32 ." Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)

4. The Commissioner of Income Tax (Appeals) observed that the disallowance of ₹.18,98,962/- being lease hold Land Expenses claimed by the appellant as revenue expenditure, the Assessing Officer treated the expenditure as capital and held that only depreciation admissible. By incurring the said expenditure such as fencing, constructing temporary shed and compound wall even though constructed on lease hold premises which helps the assessee to increase the enduring capacity of the assessee in the business the Assessing Officer has rejected the claim of the assessee that it is only a revenue expenditure and treated the same as capital in nature and allowed a depreciation. Since the department has filed SLP on the

decision of the jurisdictional High Court in the case *TVS Lean Logistics Ltd., 293 ITR 432* and also the revenue has filed appeal in RMKV & Sons, Tirunelveli before the Tribunal on similar issues and also taking into account in the case of M/s. Remington (India) Limited wherein it was held that "if the expenditure has becomes an integral part of the leased property, then the same should be allowed as deferred expenditure over the period of lease. In case the expenditure is incurred for bringing up a new asset in the nature of expenditure is incurred for bringing up a new asset in the nature of furniture and machinery, which do not form on become an integral part of the leased premises, the same cannot be treated as 'revenue expenditure'". The additions made by the Assessing Officer at ₹17,09,066/- after allowing depreciation, is confirmed, and the grounds of appeal filed by the assessee is dismissed. Against this, the assessee is in appeal before us.

5. The Id. Authorised Representative for assessee submitted that in this case, the assessee has taken land on leasehold and the assessee had put temporary fencing and temporary shed with metal sheet roofing and laid concrete flooring and the assessee also erected barbed fencing all around the plot. On land taken on lease, there were no buildings or super structures. The Ld. AR submitted that after

taking the land on lease, the assessee had constructed buildings/super structures on it. Such super structures are owned by the owners of the land and the assessee had only the right of possession over a limited period. According to the Ld. AR, after the expiry of the lease period the assessee had to vacate the land and the building/super structures constructed by the assessee shall then belong to the land owner and the assessee has no right/claim over it. The Ld. AR submitted that for such right of possessing for the limited period, since the building/super structure was constructed by the assessee, the assessee need not pay rent periodically. The Ld. AR reiterated that the assessee had not acquired any asset or advantage of an enduring nature. The assessee is not the owner of these facilities, but had only a right of possession for a limited period. These structures were put up for the business purposes and had to be demolished/removed after the period of lease and hence are not of permanent nature. The Ld. AR submitted that the payment of monthly rent is only revenue expenditure and hence payment of such revenue expenditure cumulatively in one year is only revenue in nature. Relating to revenue expenditure on leasehold building, the Ld. AR submitted that the assessee had also taken on lease land and building for its business purposes. But for making it functional the assessee had to incur revenue expenditure in the nature

of making temporary partitions, floorings etc. Such expenses were treated as revenue expenditure for the reason that no asset or advantage of an enduring nature was acquired out of such expenses. The Ld. AR submitted that as can be seen from the details of expenditure incurred at each location and nature of facilities created, these facilities are not of a permanent nature and no civil structure has been created. The expenses were only to make the structure useful to the assessee during the tenure of the lease period which was for a short period. The assessee relied on the following judicial precedents:-

(i) The co-ordinate bench decision in the case of *ACIT vs. M/s Sundaram Asset Management Co. Ltd, Chennai in ITA No.1241 & 1154/Mds/2014, dated 22nd August, 2014*, wherein it was held as under:-

“10. Heard both sides. Perused orders of lower authorities and the decision of this Tribunal relied on. The Assessing Officer while completing the assessment disallowed these expenses claimed by the assessee towards renovation and repairs treating the same as capital expenditure. On appeal, the Commissioner of Income Tax (Appeals) following the decision of the co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2008-09 deleted the disallowance, against which the Revenue is in appeal before us. This Tribunal while dealing with similar issue in assessee's own case for the assessment year 2008-09 observed as under:-

“iv. The fourth ground of appeal of the assessee relates to repairs of lease-hold premises. The assessee has placed on record at Page No. 42 of the Paper Book, the nature of work carried out by the assessee in the leased office premises.

The assessee has claimed the expenditure on civil work which includes demolition, painting, flooring and partition etc., amounting to Rs.2,06,61,216/- as revenue expenditure. The authorities below have held the same to be capital expenditure. The assessee has taken office building on lease for the period of three years with an option to extend with the consent of both parties. An Explanation1 to Section 32(1) clearly spells out that where the business or provision of the assessee is carried on in a building not owned by him, in respect of which the assessee holds a lease or other right of occupancy, any capital expenditure is incurred by the assessee for the purpose of the business or profession on the construction of any structure or doing of any work in or in relation to and byway of renovation or extension or improvement to the building, then the provisions of this clause shall apply as if the said structure or work is building owned by the assessee. However, the aforesaid provisions are applicable where new asset has come into existence. The assessee in support of his contentions has relied on the order of the co-ordinate bench of the Tribunal in the case of M/s. Sundaram BNP Paribas Asset Management Company Ltd., Vs. ACIT (supra), the Tribunal in the aforesaid order has held as under:

5. We have considered the rival submissions. A perusal of the breakup of the expenses which have been disallowed clearly shows that the expenditures are on the interior decorations and creation of the office atmosphere. The expenditure has not resulted in any building coming into existence nor has the existing building been modified or the structure altered. As the existing building has not been altered and there is no change to its structure as a result of the expenditure incurred by the assessee, it cannot be said that the

expenditure incurred by the assessee is in the capital field. Further a perusal of the expenditure clearly shows that it is in the revenue field. In the circumstances we are of the view that the expenditure on the repairs and maintenance in the form of electrical fittings, electrification, cabinet, work station, partition, cupboard, stand etc. are liable to be treated as a revenue expenditure. In the circumstances, the orders of the learned CIT(A) and the Assessing Officer are reversed on this issue and the Assessing Officer is directed to grant the assessee the claim of revenue expenditure in regard to the said expenditure. Consequently, the depreciation as allowed by the Assessing Officer on the said expenditure which has been capitalized would stand reversed.

Whether the expenditure incurred on renovation of a building is capital or revenue, is a question of fact. The same has to be decided on the facts of each case. We find that the facts of the case of the assessee are similar to the one adjudicated by the Tribunal mentioned above. The civil work relates to the interior decoration and creation of the office atmosphere. Respectfully following the decision of the co-ordinate bench of the Tribunal, this ground of appeal of the assessee is allowed and the expenditure incurred by the assessee in modifying the interiors of a building into office are held to be revenue in nature.”

11. The co-ordinate Bench considered a similar issue where the assessee claimed expenditure on civil work which includes demolition, painting, flooring and partition etc. as revenue expenditure. The Tribunal after considering Explanation 1 to section 32(1) and also the decision of the

co-ordinate Bench of this Tribunal in the case of M/s. Sundaram BNP Paribas Asset Management Company Ltd. Vs. ACIT in ITA No.518/Mds/2010 dated 7th January, 2011, held that expenditure incurred by the assessee is revenue in nature. Respectfully following the said decision, we hold that the expenditure incurred by the assessee for demolition, painting, flooring, partition, modular and electrical works on the leasehold premises is revenue expenditure. Thus, we uphold the orders of the Commissioner of Income Tax (Appeals) on this issue and reject the grounds of appeal raised by the Revenue.

(ii) Further, the Id. Authorised Representative for assessee relied on the judgment of the jurisdictional High Court in the case of *CIT vs. Ayesha Hospitals (P) Ltd, 292 ITR 0266*, wherein it was held that "expenditure incurred by assessee on painting relaying of damaged floors, partitions etc., is leasehold premises is allowable as revenue expenditure".

(iii) Further, he relied on the judgment of the jurisdictional High Court in the case of *CIT vs. TVS Lean Logistics Ltd, 293 ITR 0432*, wherein it was held that "where the words of a statute are absolutely clear and unambiguous, rule of literal construction has to be followed, even if literal interpretation results in hardship or inconvenience; Court cannot enlarge the scope of legislation".

6. On the other hand , the Ld. DR strongly oppose the order of the CIT(A) on this issue and submitted that the provisions of section 32(1) are applicable to the facts of the present case and by no stretch of imagination, the expenditure incurred on construction of superstructure on leasehold land can be considered as revenue expenditure. He submitted that reliance placed by the CIT(A) on the decision of the High Court of Madras in the case of *CIT vs. TVS Lean Logistics* (supra) is totally misplaced. More so, he submitted that the order of the Tribunal in the case of *ABT Ltd vs.ACIT 21 ITR (Trib) 634* is also not on the same facts. In that case, the Tribunal decided the issue in favour of the assessee on the reasoning that the expenditure incurred by the assessee towards refurnishing repairs and improvements of the leased premises used for business purposes can always be a revenue expenditure and not capital expenditure. The improvements made by the assessee in that case are temporary or of temporary nature which cannot be retrieved by the assessee at the end of the term of the lease and can only be revenue expenditure. In the present case, according to the Ld. DR, the assessee carried on construction of super structure on leasehold land which cannot be considered as an improvement or repair.

7. We have heard the parties and perused the record. In the present case, the assessee has taken the land on leasehold on which the assessee constructed super structure and claimed as revenue expenditure. The same was disallowed by the CIT(A). The Ld. DR contended that the assessee constructed the building in the leased land and it is not the case of renovation of the leased building or improvement of the leased building as in the case of *ABT Ltd cited supra* as held by the Tribunal. For settling the controversy, we have to go through the Explanation 1 to sec. 32(1) of the Act which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 1.4.1988 which deals with the situation where the expenditure has been incurred by the assessee on construction of any structure on leasehold premises. The Explanation 1 is reproduced herewith below:

“Explanation 1. Where the business or profession is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of improvement to, building then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.”

8. To fall within the ambit of Explanation 1 questions which are to be answered are:

- (i) Whether the assessee is carrying on business or profession in a leased building or other rights of occupancy?
- (ii) Whether the assessee has incurred any capital expenditure for the purpose of business on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension or improvement in the building.

9. If the answer to the aforementioned questions is in affirmative, the assessee falls within the purview of Explanation 1 to sec. 32(1). In the instant case, it is an admitted fact that the assessee has taken land on lease for setting up of project for processing of coir. It is also undisputed that the assessee has constructed the building at the leased premises. Thus the assessee has constructed super structure. These construction activities carried out by the assessee if put on to the test of Explanation 1 would show that the construction made by the assessee on the leased out premises would amount to capital expenditure. The assessee in order to support his case has relied on the judgment of the Madras High Court in the case of *TVS Lean Logistics Ltd. (supra)*. In the said case, the assessee had constructed a building on the leased land for the business advantage. The Court held that the entire cost of construction is admissible as revenue

expenditure. Explanation 1 categorically states that the business or profession is carried on in a leased building and not on land. The High Court in para 4.4 of the judgment further held as under:-

“4.4 What constitutes a capital expenditure and what does not, to attract Expln. 1 to section 32(1) of the Act depends upon the construction of any structure or doing any work or in relation to and by way of renovation, extension or improvement to the building which is put up in a building taken on lease by him for carrying on his business and profession of the assessee, but not in a case of construction of any structure or doing any work or relation to where such building is put up/constructed for the purpose of business or the profession of the assessee in a land taken on lease by the assessee.”

10. In the above case, the assessee has taken land on lease and made certain construction. It is the case that the assessee has constructed a new building on the leased land. The High Court has further held in the aforesaid case that the language employed in a statute is the determinative factor of the legislative event and even assuming there is a defect or any omission in the words used in the Legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result an any departure from the literal rule would really be amending the law in the garb of interpretation, which is not permissible and which would be destructive of judicial discipline.

11. The Supreme Court of India in the case of *Madras Auto Service (P) Ltd., 233 ITR 468* while dealing with a similar controversy has observed as under:

“5 In order to decide whether this expenditure is revenue expenditure or capital expenditure, one has to look at the expenditure from a commercial point of view. What advantage did the assessee get by constructing a building which belonged to somebody else and spending money for such reconstruction? The assessee got a long lease of a newly constructed building suitable to its own business at a very concessional rent. The expenditure therefore, was made in order to secure a long lease of new and more suitable business premises at a lower rent. In other words, the assessee made substantial savings in monthly rent for a period of 39 years by expending these amounts. The saving in expenditure was a saving in revenue expenditure in the form of rent. Whatever substitutes for revenue expenditure should normally be considered as revenue expenditure. Moreover, assessee in the present case did not get any capital asset by spending the said amounts. The assessee therefore could not have claimed any depreciation. Looking to the nature of the advantage which the assessee obtained in a commercial sense, the expenditure appears to be revenue expenditure.”

12. Thereafter, the Apex Court referring to several cases decided held as under:

“11. All these cases have looked upon expenditure which did bring about some kind of an enduring benefit to the company as a revenue expenditure when the expenditure did not bring into existence any capital asset for the company. The asset which was created belonged to somebody else and the company derived an enduring business advantage by expending the amount. In all these cases, the expenses have been looked upon as having been made for the purpose of conducting the business of the assessee more

profitably or more successfully. In the present case also since the asset created by spending the said amounts did not belong to the assessee but the assessee got the business advantage of using modern premises at a low rent, thus saving considerable revenue expenditure for the next 39 years, both the Tribunal as well as the high Court have rightly come to the conclusion that the expenditure should be looked upon as revenue expenditure.”

13. From the above judgment, we can conclude that it is essential that the expenditure incurred on the construction of any structure on the leased premises should result in enduring benefit. In our considered opinion, the case of the assessee very much falls within the ambit of Explanation 1 of section 32(1) of the Act and in view of Supreme Court judgment in the case of *Madras Auto Service*, cited supra, we are not considering the various judgments cited by the Ld. AR.

14. In view of the above, we find no merit in the arguments of the assessee's counsel on this issue. Hence, this ground of the assessee is dismissed.

15. For ground Nos. 6,7 and 8, the Id. Authorised Representative for assessee has not put forth any argument. Being so, in our opinion, the assessee has no grievance. Hence, the grounds of the assessee are dismissed.

16. In the result, the appeal of the assessee in ITA No.700/Mds/2014 is dismissed.

Order pronounced on Friday, the 11th day of September, 2015, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:11.09.2015

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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