

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.1561/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

M/s Hinduja Foundries Ltd.,
(formerly known as M/s Ennore
Foundries Ltd.),
Kathivakkam High Road, Ennore,
Chennai - 600 034

v. The Assistant Commissioner of
Income Tax,
Corporate Circle 2,
Chennai - 600 034.

PAN : AAACE 1078 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 07.01.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

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) – 6, Chennai, dated 18.03.2015 and pertains to assessment year 2007-08.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee incurred an expenditure of ₹2,01,14,335/- towards expansion of the existing business and claimed the same as revenue expenditure. However, the Assessing Officer disallowed the claim of the assessee on the ground that the expenditure incurred by the assessee was with regard to setting up of new foundry and the operation of the foundry has not commenced during the year under consideration. Therefore, the expenditure incurred prior to commencement of operation of industry should be capitalized. Therefore, the Assessing Officer found that the expenses cannot be allowed as revenue expenditure. Placing reliance on the judgment of Madras High Court in CIT v. Rane (Madras) Limited (293 ITR 459), the Ld.counsel submitted that the expenditure and wages connected with expansion of the business has to be allowed as business expenditure. According to the Ld. counsel, because of interconnection of management, financial, administrative and production aspects, the expenditure has to be construed as revenue in nature. A similar view has been taken by the Madras High Court in Sakthi Sugars Limited in TC(A) No.411 of 2004 dated 10.08.2010.

3. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that during the course of assessment, the Assessing Officer found that there was increase in the capital work in progress. The assessee claimed before the Assessing Officer that setting up of a new grey iron casting foundry was in progress. The capital expenditure incurred with such foundry was shown under the head "Capital work in progress". The assessee has also clarified that the assessee has not commenced the operation during the year under consideration. The entire expenditure was capitalized in the books of account and shown under the head "Capital work in progress". However, while computing the taxable income, the assessee has deducted a sum of ₹2,01,14,335/- in the computation of total income. Referring to Section 36(1)(iii) of the Income-tax Act, 1961 (in short 'the Act'), the Ld. D.R. pointed out that the interest on borrowed funds, though it is revenue in nature, cannot be allowed as revenue expenditure when the borrowed capital was for an expansion of existing business till the asset was first put to use. Therefore, according to the Ld. D.R., the entire cost of expenditure, including interest, salary, wages, has to be capitalized till the industry commences its operation. Once it commences its operation, then naturally the expenditure like salary,

wages, interest, has to be allowed as revenue expenditure. In the case before us, according to the Ld. D.R., the assessee has not commenced its operation, therefore, whatever nature of expenditure, it has to be capitalized in view of Section 36(1)(iii) of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee incurred the expenditure for expansion of its existing business and the expenditure incurred by the assessee was shown in the books of account as "Work in progress" in the capital asset. However, while computing the taxable income, the assessee claimed the expenditure to the extent of ₹2,01,14,335/- as revenue expenditure.

5. We have carefully gone through the judgment of Madras High Court in Rane (Madras) Limited (supra). The Madras High Court examined the issue on identical circumstances and found that when the industry is set up as extension of existing business, the deduction claimed by the assessee with regard to expenditure incurred in connection with new unit, even though it is independent, because of interconnection of management, financial,

administrative, production aspects, has to be construed as revenue in nature and therefore, liable for deduction while computing the taxable income. In the case before us, the assessee is claiming payment of interest, insurance, loan processing fees, travelling and conveyance, professional and consultancy charges and other expenditures including salary and wages. The lower authorities had no occasion to consider the judgment of Madras High Court in Rane (Madras) Ltd. (supra) . Therefore, this Tribunal is of the considered opinion that the details of the expenditure have to be considered in the light of judgment of Madras High Court in Rane (Madras) Ltd. (supra) and other statutory provisions of the Income-tax Act. Since the lower authorities have not examined the details of the expenditure incurred, and in view of the judgment of Madras High Court in Rane (Madras) Ltd. (supra), this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh and thereafter decide the same in accordance with law after giving reasonable opportunity to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 19th February, 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 19th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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