

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.300/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Deputy Commissioner of
Income Tax,
Circle – 1,
Tirupur.

v. M/s Eastman Exports Global
Clothing Pvt. Ltd.,
5/591, Sri Lakshmi Nagar,
Pichampalayampudur,
Tirupur – 641 602.

(अपीलार्थी/Appellant)

PAN : AACCC 0952 E

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.291/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Eastman Exports Global
Clothing Pvt. Ltd.,
5/591, Sri Lakshmi Nagar,
Pichampalayampudur,
Tirupur – 641 602.

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

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Sh. Sailendra Mamidi, Principal CIT

निर्धारिती की ओर से /Assessee by : Sh. T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 13.09.2017

घोषणा की तारीख/Date of Pronouncement : 09.11.2017

आदेश /O R D E R

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

Both the appeals of the Revenue and assessee are directed against the order of the Commissioner of Income Tax (Appeals) -3, Coimbatore, dated 24.11.2016 pertaining to assessment year 2013-14. Since common issue arises for consideration in both the appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that the first issue arises for consideration in the Revenue's appeal is with regard to incentive given by the Government for exploring new market for exports. According to the Ld. D.R., when this issue came before this Tribunal for the assessment years 2011-12 and 2012-13 in I.T.A. Nos.47 & 48/Mds/2016, this Tribunal found that the Government of India provided incentive for exploring new market across the globe. Exploring a new market for a specified area would expand the market area of the assessee, therefore, the incentive given by Government of India for exploring the new market is a capital receipt, hence that cannot be treated as income either under

Section 2(24) or 28 of the Income-tax Act, 1961 (in short 'the Act'). Accordingly, the similar addition made by the Assessing Officer was deleted by this Tribunal. According to the Ld. D.R., the CIT(Appeals) deleted the addition by placing reliance on the order of this Tribunal.

3. We have heard Sh. T. Banusekar, the Ld. representative for the assessee also. The Market Linked Focus Product Scheme was promoted by Government of India for giving incentive to explore the new market area across the globe. As per the Market Linked Focus Product Scheme, the assessee received the incentive. The question arises for consideration is whether such incentive is revenue receipt or capital receipt. This Tribunal in the assessee's own case for assessment years 2011-12 and 2012-13 examined this issue and found that the incentive received by the assessee is a capital receipt and it cannot be treated as income under Section 2(24) or 28 of the Act. Since the facts are similar and identical to that of assessment years 2011-12 and 2012-13, the CIT(Appeals) has rightly placed reliance on the order of this Tribunal. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. The next issue arises for consideration is with regard to the amount of ₹1,54,10,800/- spent on construction of building in the lease hold land.

5. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that the assessee took a vacant land on lease and constructed a building. The cost of construction of the building was claimed as revenue expenditure. Placing reliance on the order of this Tribunal for assessment years 2011-12 and 2-12-13 in I.T.A. Nos.101, 102 & 103/Mds/2016, the Ld. D.R. submitted that on identical situation, this Tribunal remitted back the matter to the file of the Assessing Officer to decide the matter in the light of the judgment of jurisdictional High Court and Supreme Court. However, according to the Ld. D.R., the CIT(Appeals) found that the expenditure of ₹1,54,10,800/- was revenue expenditure. Accordingly, he allowed the same. In respect of electrical fittings, according to the Ld. D.R., when the assessee claimed the expenditure of ₹98,72,104/-, the CIT(Appeals) found that the expenditure incurred by the assessee on electrical fittings would form part of cost of construction, therefore, it has to be capitalized. According to the Ld. D.R., the cost of construction and electrical

fittings cannot be treated as revenue expenditure at all. Explanation 1 to Section 32(1) of the Act would be applicable not only to the cost of electrical fittings but also to the cost of construction of the building on the leasehold land, therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing ₹1,54,10,800/-.

6. On the contrary, Sh. T. Banusekar, the Ld. representative for the assessee, submitted that this Tribunal in the assessee's own case for assessment year 2011-12, found that in view of the judgment of Madras High Court in CIT v. TVS Lean Logistics Ltd. (2007) (293 ITR 432) and also judgment of Apex Court in CIT v. Madras Auto Service (P.) Ltd. (1998) (233 ITR 468), the amount spent by the assessee in construction of the building has to be treated as revenue expenditure since the ownership of the building was with lessor. According to the Ld. representative, in fact, this Tribunal after referring to the judgment of Apex Court in Madras Auto Service (P.) (supra) and the judgment of Madras High Court in TVS Lean Logistics Ltd. (supra) and various other judgments of other High Courts and this Tribunal, directed the Assessing Officer to re-examine the matter. The CIT(Appeals) after considering the order of this Tribunal for the assessment year 2011-12, examined

the matter independently and found that the ownership of the building was with lessor, therefore, the construction of the building cannot be said to be one which brings an enduring benefit to the assessee. Accordingly, by following the judgment of Apex Court in Madras Auto Service (P.) Ltd. (supra) and the judgment of Madras High Court in TVS Lean Logistics Ltd. (supra), the CIT(Appeals) found that the cost of construction of ₹1,54,10,800/- incurred by the assessee is on the revenue field and accordingly he allowed the same.

7. The Ld. representative for the assessee further submitted that in respect of expenditure incurred by the assessee towards electrical fittings to the extent of ₹98,72,104/-, the CIT(Appeals) found that it is a capital expenditure. The assessee has filed a separate appeal in I.T.A. No.291/Mds/2017 challenging the disallowance made by the CIT(Appeals) to the extent of ₹98,72,104/-. According to the Ld. representative, the cost on electrical fittings forms part of cost of construction of the building itself, therefore, when the cost of construction was treated as revenue expenditure, the CIT(Appeals) ought to have treated the expenditure incurred by the assessee on electrical fittings also as

revenue expenditure. The CIT(Appeals) cannot bifurcate the expenditure with regard to cost of construction of the building and electrical fittings. The electrical fitting being a part of the building, according to the Ld. representative, the expenditure has to be allowed as revenue in nature.

8. We have considered the rival submissions on either side and perused the relevant material available on record. The assessment year under consideration is 2013-14. For the assessment year 2011-12, this Tribunal directed the Assessing Officer to examine the matter in the light of the judgment of Apex Court in Madras Auto Service (P.) Ltd. (supra) and the judgment of Madras High Court in TVS Lean Logistics Ltd. (supra). The CIT(Appeals) by taking note of the direction, examined the issue by himself and found the cost of construction of the building to the extent of ₹1,54,10,800/- as revenue expenditure. The CIT(Appeals) found that the rent payable by the assessee for the present and in future would be considerably saved. The Apex Court in Madras Auto Service (P.) Ltd. (supra) held that expenditure on construction in lease hold land is allowable as revenue expenditure in case it resulted in saving of rent in future. However, the expenditure incurred by the assessee towards

electrical fittings to the extent of ₹98,72,104/- was treated as capital expenditure by the CIT(Appeals). When the assessee constructed a new building, this Tribunal is of the considered opinion that the cost of construction of the building as well as the electrical fittings has to be treated as cost of construction of the building and there is no reason for bifurcating the same. Both the cost of construction of the building and electrical fitting has to be either in the capital field or in the revenue field. The CIT(Appeals) allowed the cost of construction on the ground that the Assessing Officer has not examined the savings of rent payable in future.

9. Since this Tribunal remitted back the matter to the file of the Assessing Officer to decide the issue afresh for assessment year 2011-12, it would be more appropriate for the Assessing Officer to examine the matter and find out whether the cost of construction of the building on the leasehold land is revenue expenditure or capital expenditure. The Assessing Officer shall bring on record whether the assessee saved any rent in future. Accordingly, the matter needs to be re-examined by the Assessing Officer. Hence, the orders of both the authorities below are set aside and the issue of disallowance of cost of construction of the building and the cost of

electrical fittings is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of judgment of Apex Court in Madras Auto Service (P.) Ltd. (supra) and the judgment of Madras High Court in TVS Lean Logistics Ltd. (supra).

10. In the result, the appeal filed by the Revenue in I.T.A. No.300/Mds/2017 is partly allowed for statistical purposes and the appeal filed by the assessee in I.T.A. No. 291/Mds/2017 is allowed for statistical purposes.

Order pronounced on 9th November, 2017 at Chennai.

sd/-
(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 9th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-3, Coimbatore
4. Principal CIT- 3, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.