

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2008

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN  
AND  
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.369 and 370 of 2008 and  
M.P.No.1 of 2008 in T.C.A.370/08

The Commissioner of Income Tax  
Tamil Nadu III, Madras

Appellant in both the appeals

-vs-

Sundaram Clayton Ltd.,  
No.24 (Old No.8) Haddows Road  
Chennai 34.

Respondent in both the appeals

TAX CASES filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, MADRAS 'C' Bench, Chennai dated 16.03.2007 passed in ITA.NoS.551-674/mds/2005 respectively preferred against the order of the commissioner of Income Tax (Appeals)-V Chennai 600 034 in PAN/GI.No.AAA.CS.4920J and ITA.No.125/2004-2005 date of order 24.12.05 and against the order of the Additional Commissioner of Income Tax, Company Range, VI, Chennai is PAN/GIR.No.AAACS.4920J date of order 31.03.2004 for the assessment year 2001-2002.

For Appellant : Mr.J.Naresh Kumar,  
Standing Counsel for IT Department

JUDGMENT

(Judgment of the Court was delivered by  
K.RAVIRAJA PANDIAN, J.)

These two appeals relate to the assessment year 2001-2002 preferred against the common order dated 16.03.2007 passed by the Income Tax Appellate Tribunal in two appeals in ITA.No.551/Mds/2005 and ITA.No.674/Mds/2005.

2. The material facts culled out from the statement of facts, stated in the memorandum of appeal, are as follows:-

The assessee is a manufacturer of automobile components like air brakes and non Ferrous castings. The assessee company filed its return of income for the assessment year 2001-02 declaring total income of Rs.14,43,44,360/-. The assessee subsequently filed a revised return declaring the total income in a sum of Rs.14,20,68,210/-. The assessee has purchased software to the tune of Rs.47,57,664/- and claimed the same as revenue expenditure. The

assessing officer computed it as capital in nature and allowed depreciation. The assessee claimed that the interest income earned on inter-corporate deposits, SBI bonds, deposit on margin money and fixed deposits as forming part of business income for computation under section 80HHC of the Income Tax Act. The assessing officer assessed the same under the head "income from other sources". Like that, the assessing officer excluded the receipts in respect of written back provision in a sum of Rs.13,59,500/- and the exchange rate of Rs.79,048/- as not directly derived from the business activity and framed the assessment.

3. On appeal at the instance of the assessee, the Commissioner of Income-tax (Appeals) confirmed the order of the assessing officer treating the expenses incurred in purchase of software components as capital in nature. As the assessee furnished details in respect of the interest earned, inter-corporate deposits, margin money deposit and other deposits, the Commissioner of Income Tax (Appeals) directed the assessing officer to treat the sum of Rs.3,13,500/- as income from business and included the same in the profit for the purpose of deduction under section 80HHC of the Act and the remaining interest income was directed to be treated under the head of "other sources". In respect of the written back provision, in a sum of Rs.13,59,500/- and the exchange rate in a sum of Rs.79,048/-, the Commissioner of Income Tax (appeals) held that the write back provision and the exchange rate provision are directly connected with the business activity and hence 90% of the same should not be reduced to the profit of the business.

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue as well as the assessee filed separate appeals to the Income Tax Appellate Tribunal. The Tribunal, by its common order, which is impugned in these appeals, set aside the orders of the authorities below and directed the assessing officer to decide the issue about the claim of the assessee on purchase of software components after obtaining necessary details for verification. In respect of the income earned from various deposits, as stated above, the Tribunal held that the assessee is entitled to deduction of 10% as per clause (baa) to section 80HHC of the Income Tax Act. In respect of the written back provision and exchange rate difference, the Tribunal held that they are not to be excluded from the business profit in computing the deduction under section 80HHC of the Act.

5. The revenue, aggrieved against that common order of the Tribunal, has filed the present appeals by framing the following substantial question of law :

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1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in remitting back to the assessing officer to decide the issue after obtaining necessary details for verification, even though the expenditure for the purchase of software is capital in nature?
2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in

holding that, interest on Inter Corporate Deposits, Margin Money Deposits, and Trade Advances to Suppliers held to be entitled to deduction to the extent of 10% as per clause (baa) to Section 80HHC of the Income Tax Act, 1961 is valid?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the write back of provision and exchange rate difference are not to be excluded from business profits in the calculation of deduction under Section 80HHC of the Income Tax Act, 1961?

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"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that, sales tax collections are to be excluded from business profits in the calculation of deduction under section 80HHC of the Income Tax Act, 1961?"

6. It is the submission of the learned counsel for the revenue that the first question is squarely covered against the revenue by the decision of this Court in the case of CIT v. Southern Roadways Ltd., (2007) 288 TIR 15, wherein it was held that the upgradation of computers by changing certain parts thereby enhancing the configuration of the computers for improving their efficiency, but without making any structural alterations is not change of an enduring nature. The expenditure incurred by the assessee had, therefore, to be treated as revenue expenditure.

7. While deciding the issue, the Division Bench took note of the decisions in the cases of Alembic Chemical Works Co. Ltd. v. CIT, (1989) 177 ITR 377 (SC) and B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia, (1966) AC 224 (PC); wherein it has been held that,

"What is capital expenditure and what is revenue are not eternal verities but must needs be flexible so as to respond to the changing economic realities of business. The expression 'asset or advantage of an enduring nature' was evolved to emphasise the element of a sufficient degree of durability appropriate to the context. .... 'Enduring Benefit' is not thinking of advantages that are permanent. There is a difference between the lasting and everlasting."

Similar view has been taken by the Division Bench of this Court in CIT v. Janakiram Mills Ltd., (2005) 275 ITR 403 (Mad); CIT v. Southern Roadways Ltd., (2006) 282 ITR 379.

8. In respect of the second and the third questions of law, it is the submission of the learned counsel for the revenue, that, on the reading of the order of the Tribunal, it is apparent that the said questions of law do not arise out of the order and hence, need not be taken into consideration. The same is recorded.

9. The question of law framed in the appeal in T.C.(A) No.370 of 2008, as to whether, the Income Tax Appellate Tribunal was right in law in holding that, sales tax collections are to be excluded from business profits in the calculation of deduction under section 80HHC



of the Income Tax Act, 1961?" is covered by the decision of the Supreme Court in the case of CIT v. Lakshmi Machine Works, (2007) 290 ITR 667, wherein it has been held as follows :

"The principal reason for enacting a formula in section 80HHC of the Income Tax Act, 1961, is to disallow a part of the concession thereunder when the entire deduction claimed cannot be regarded as relating to exports. Therefore, while interpreting the words "total turnover" in the formula in section 80HHC one has to give a schematic interpretation. The various amendments made therein show that receipts by way of brokerage, commission, interest, rent, etc., do not form part of business profits as they have no nexus with the activity of export. The amendments made from time to time indicate that they became necessary in order to make the formula workable. If so, excise duty and sales tax also cannot form part of the 'total turnover' under section 80HHC(3); otherwise, the formula becomes unworkable."

10. For the aforesaid reasons, the appeals are dismissed as the questions of law have already been decided against the revenue. No costs. The connected miscellaneous petition is dismissed.

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Asst.Registrar

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Sub Asst.Registrar

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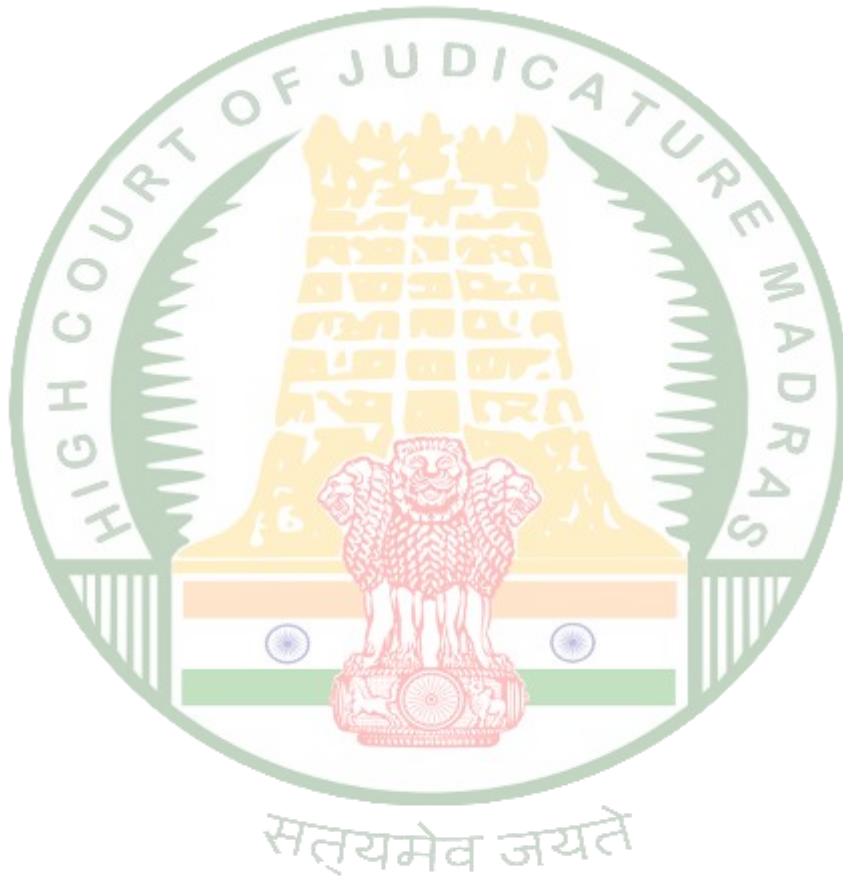
- 1.The Assistant Registrar  
Income-tax Appellate Tribunal  
Rajaji Bhavan, Besant Nagar,  
Che18 of 1998ai-90. (Five copies with records)
2. The Secretary,  
Central Board of Direct Taxes,  
New Delhi. (Three copies)
3. The Commissioner of Income Tax,  
Tamilnadu III, Madras.
4. The Commissioner of Income Tax (Appeals V),  
Chennai.
5. The Income Tax Appellate Tribunal,  
Chennai 'C' Bench, Chennai.

6. The Additional Commissioner of Income Tax,  
Company Range-VI, Chennai.

+1 cc To Mr.Pushya Sitaraman, Advocate, SR.33573

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