

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.418 of 2007

The Commissioner of Income Tax
Chennai.

..Appellant

Vs.

M/s. Ucal Fuel Systems Ltd.
Raheja Towers
Delta Wing Unit 505
No.177
Annasalai
Chennai.

..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 29.9.2006 in ITA No.401/Mds/2001 for the assessment year 1997-98.

For Appellant : Mr.J.Naresh Kumar, Jr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.401/Mds/2001 dated 29.9.2006, raising the following substantial question of law.

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the upfront lease rent charges paid for taking the land and building at Pondicherry on lease for a period of 20 years for the purpose of setting up the new unit at PIPDIC Industrial estate at Pondicherry, is a revenue expenditure?

2.1. The assessee filed its returns for the period during the relevant assessment year claiming a sum of Rs.30.00 lakhs and Rs.8.00 lakhs paid for taking land and building at Pondicherry on lease for a period of twenty years, as revenue expenditure.

2.2. The Assessing Officer, finding that the assessee had taken the land on lease for twenty years for setting up a new unit at PIPDIC Industrial Estate at Pondicherry, that the amount paid by the assessee as advance was in the nature of discounted value of the lease amount otherwise payable over the period of twenty years and that the assessee had treated the said payment as capital in its books of account in order to project a boosted profit to impress the share holders, treated the said payment as capital expenditure.

2.3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, holding that the entire expenditure could not be treated as revenue in nature for the purpose of deduction under the Income Tax Act, when the assessee had treated the same as capital in its books of accounts for the purpose of projecting a boosted profit to impress the share holders, dismissed the appeal confirming the order of the Assessing Officer.

2.4. On further appeal by the assessee, the Income Tax Appellate Tribunal, following the decision in Commissioner of Income Tax v. Gemini Arts P. Ltd. (254 ITR 201), allowed the appeal. Hence, the present appeal by the Revenue.

3. The learned Standing Counsel appearing for the Revenue fairly contends that the issue raised in the above appeal has already been decided by this Court in favour of the assessee in Commissioner of Income Tax v. Gemini Arts P. Ltd. (254 ITR 201).

4. In Commissioner of Income Tax v. Gemini Arts P. Ltd. (254 ITR 201) the assessee therein had entered into a leasehold agreement for forty eight years and paid the rent for forty seven years as lumpsum and claimed the entire sum as deduction. The Tribunal allowed the same on the ground that the expenditure was incurred wholly and exclusively for the purpose of business. On a reference, following the decision of the Apex Court in Commissioner of Income Tax v. Madras Auto Service P. Ltd. (233 ITR 468) wherein it was held that to decide whether expenditure is revenue or capital one has to look at the expenditure from a commercial point of view and whatever substitutes for revenue expenditure should normally be considered as revenue expenditure, this Court has held as follows:

"Had the assessee chosen to pay rent annually for each and every year of lease such expenditure certainly would have to be regarded as revenue expenditure. The fact that the payment was made in lump sum for the entire duration of the lease does not alter the character of it being a revenue expenditure."

5. Following the ratio laid down in the decision cited supra, we do not find any substantial question of law arises for our consideration. Hence, the appeal is dismissed.

[PRV/10575]