* **THE HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1202/2006**

**%** Judgment delivered on: 15.09.2008

**THE COMMISSIONER OF INCOME TAX, DELHI-IV. ..... APPELLANT**

**Versus**

**M/S HI LINE PENS PVT. LTD. ..... RESPONDENT**

**Advocates who appeared in this case:**

| | | |
|---|---|---|
| For the Appellant | : | Ms Prem Lata Bansal |
| For the Respondent | : | Mr Rakesh Gupta, Ms PoonamAhuja & Ms Aarti Saini |

**CORAM :**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**
**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to Reporters or not ? Yes

3. Whether the judgment should be reported in the Digest ? Yes

**Badar Durrez Ahmed, J. (Oral)**

1. Admit.

2. The following substantial question of law arises for our consideration:-

> "Whether the Income Tax Appellate Tribunal was correct in accepting the assessee's claim of expenditure of Rs.14,03,835/- towards renovation of rented premises under Section 30(a)(i) of the Income Tax Act, 1961 and in holding that the Assessing Officer had wrongly disallowed the same on the ground that the same was allowable as a deduction towards depreciation under Section 32 of the said Act?"

3. The counsel for the parties agreed that no paper books would be necessary and that this appeal be heard straight away.

4. The facts of the case are that the assessee had claimed the aforesaid expenditure of Rs.14,03,835/- as a deduction under Section 30(a)(i) of the said Act. The expenditure was in respect of tenanted premises which had been taken by the assessee on lease for the purposes of its business. The expenditure was towards false ceiling, fixing tiles, replacing glasses, wooden partitions, replacement of electric wiring, earthing, replacement of GI pipes etc. As per the assessee since the premises were not in use for a long time, the assessee was required to make these expenditures to make the premises usable for the purposes of its business. The assessee's contention was that these expenses were not incurred for creating any new asset but for making the premises usable for the purposes of its business. The assessee's claim was also that the expenditure was in the nature of

revenue expenditure and was not of a capital nature as no new asset was brought into existence.

5. The said expenditure was disallowed by the Assessing Officer because in his view Explanation (1) to Section 32(i) of the said Act would come into play. According to the Assessing Officer, the expenditure was to be treated as capital expenditure as it had been incurred on improvement of rented premises as it was the first year of the business of the assessee.

6. Being aggrieved by the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner Income Tax (Appeals) who decided in favour of the assessee by holding that the expenses incurred by the assessee on the rented premises did not bring into existence any new asset and that the same were allowable as revenue expenses. Consequently, the CIT (Appeals) deleted the disallowance made by the Assessing Officer.

7. The revenue took the matter in appeal before the Tribunal, which also agreed with the view taken by the Commissioner Income Tax (Appeals) and held in favour of the assessee. The Tribunal found that the assessee had incurred expenditure on renovation of rented premises. The expenditure was incurred in relation to the fixing of false ceiling,

tiles, replacing glasses, partitions, electrical wiring replacements, internal wire replacement, earthing and GI pipe replacement etc. The Tribunal returned a finding that the advantage obtained by the assessee was for the purpose of the business of the assessee and was not for the acquisition of a capital asset. The Tribunal placed reliance on the decision of this Court in the case of ***Installment Supply Pvt. Ltd. v. Commissioner of Income-Tax, Delhi-II; 149 ITR 52 (Delhi)*** and held in favour of the assessee and against the revenue.

8. It is against this order of the Tribunal dated 16.9.2005 pertaining to the assessment year 1997-98 that the revenue has preferred this appeal. The learned counsel for the appellant (Revenue), first of all, placed reliance on the decision of the Supreme Court in the case of ***CIT v. Saravana Spinning Mills P.Ltd.;293 ITR 201***. However, we find that decision of the Supreme Court was in relation to the expression 'current repairs' used in Section 31(i) of the said Act, which reads as under :--

> **"Section 31**
> **REPAIRS AND INSURANCE OF MACHINERY, PLANT AND FURNITURE.**
> In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed -
> (i) The amount paid on account of current repairs thereto;
>
> (ii) xxxxx xxxxxxx xxxxxx xxxxxx xxxxxx."

9. It is apparent that the provision pertains to repairs and insurance of machinery, plant or furniture used for the purposes of business or profession and by virtue of Section 31(i) a deduction is allowed for the amount paid on account of 'current repairs' thereto. The Supreme Court decision is immediately distinguishable in as much as in the present case we are not concerned with the expression 'current repairs' but only with the expression 'repairs' as appearing in Section 30 and, particularly, in Section 30 (a) (i) which relates to repairs to premises undertaken by a tenant. The expression 'current repairs' appearing in Section 30 (a) (ii) relates to repairs undertaken by a person other than a tenant. The distinction between 'current repairs' and 'repairs' is borne out by the provision itself and would be apparent upon a plain reading of Section 30 :-

> **"Section 30**
> **RENT, RATES, TAXES, REPAIRS & INSURANCE FOR BUILDINGS.**
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> In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed - (a)Where the premises are occupied by the assessee -
>
> (i) As a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;
> (ii) Otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;
>
> (b) Any sums paid on account of land revenue, local rates or municipal taxes;

> (c) The amount of any premium paid in respect of insurance against risk of damage or destruction of the premises."

10. The decision in ***Sarvana Spinning Mills*** *(supra)* is also distinguishable because in that case the Supreme Court was considering the replacement of one of the machines of a textile mill which comprised of 25 independent machines. The machine which was replaced was the ring frame. The question arose, as to whether the replacement of this ring frame would fall within the expression 'current repairs' as provided in Section 31(i) of the said Act. The Supreme Court held that it did not and, therefore, the expenditure incurred for this purpose was not allowable under Section 31(i) of the said Act. The Supreme Court came to this conclusion, as would be apparent from its observations at Page 209 of the said report, on the basis of the fact that the ring frame was one of the 25 independent machines which formed part of the textile plant. The Supreme Court used the following words:-

> "In our view, the Assessing Officer was right in holding that each machine including the ring frame was an independent and separate machine capable of independent and specific function and, therefore, the expenditure incurred for replacement of the new machine would not come within the meaning of the words "current repairs". In the present case, it is not the case of the assessee that a part of the machine (out of 25 machines) needed repairs. The entire machine had been replaced. Therefore, the expenditure incurred by

> the assessee did not fall within the meaning of "current repairs" in section 31(i)."

11. The above extract immediately makes it clear that the case before the Supreme Court was entirely different from the one before us. The expression 'current repairs' is not under consideration in the present case, whereas before the Supreme Court it was that very expression which was considered. Moreover, in the present case the replacement was not of the premises but of certain 'parts' such as the internal wires and GI Pipes. The analogy of replacement of the entire machine is, therefore, not applicable to the facts of the present case.

12. The learned counsel for the revenue also placed reliance on the Supreme Court decision in ***Ballimal Naval Kishore and Another v. Commissioner of Income Tax: 224 ITR 414***. This decision is also noted in ***Saravana Spinning Mills P.Ltd.*** *(supra).* The decision in ***Ballimal Naval Kishore*** approved the test formulated by Chagla, CJ in the case of ***New Shorrock Spinning and Manufacturing Co. Ltd. v. CIT* : *(1956) 30 ITR 338 (Bombay)*** as to when could an expenditure be said to have been incurred on 'current repairs'. In ***New Shorrock Spinning and Manufacturing Co. Ltd.*** *(supra)*, it was observed that the expression 'current repairs' means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or

restoration but which is only for the purpose of preserving or maintaining an already existing asset and which does not bring a new asset into existence or does not give to the assessee a new or different advantage. It was further observed that 'current repairs' are such repairs as one attended to as and when the need arises and that the question as to when a building etc. required repairs and when the need arises must be decided not by any academic or theoretical test but by the test of commercial expediency.

13. However, the decision in ***Ballimal Naval Kishore*** *(supra)* was also with regard to the expression 'current repairs' appearing in Section 10(2)(v) of the 1922 Act which is similar to the expression appearing in Section 30(a)(ii) and Section 31(i) of the Income Tax Act, 1961. Whereas it is Section 10(2)(ii) of the 1922 Act which is similar to the provisions of Section 30(a)(i), which is applicable in the present case. Both, Section 10(2)(ii) of the 1922 Act and Section 30(a)(i) of the 1961 Act, speak only of 'repairs' and not 'current repairs'. Thus, the decision in ***Ballimal Naval Kishore*** *(supra)* would also be of no help to the revenue in as much as the facts are entirely different.

14. On the other hand, the learned counsel for the assessee placed reliance on the decisions of this Court in the case of ***Instalment Supply Pvt. Ltd. (supra) and CIT v. Escorts Finance Ltd.***: ***2006 (205) CTR***

***Del 574***. In ***CIT v. Escorts Finance Ltd.*** *(supra)* this Court was considering the amount spent on providing wooden partition, painting, glass work etc. in leased premises so as to make the premises usable. This Court took the view that such repairs were of a revenue nature and it was for the businessmen to see in what manner the leased premises were to be maintained and what were the necessary repairs which were required to be done. This Court, therefore, agreed with the view taken by the Tribunal that the expenditure incurred on painting, polishing of the floor, providing wooden panelling etc., were not in the nature of repairs which were of such an enduring character so as to characterize the same as capital expenditure.

15. In the case of ***Instalment Supply Pvt. Ltd.*** *(supra),* the expenditure was towards sanitary fittings, flooring, painting, wood work, electrical fittings etc. Applying the test laid down by the Supreme Court in ***Empire Jute Co. Ltd. v. Commissioner of Income Tax; [1980] 124 ITR 1,*** the Court was of the opinion that the assessee had only obtained an advantage in a commercial sense by re-designing the premises and providing better fittings, better material and marble flooring. The advantage obtained by the assessee was for the purposes of the business of the assessee and not for the acquisition of a capital asset. The Court also observed that the legislature had used different

language in the provisions of Section 30(a)(i) and 30(a)(ii). It observed that a tenant is entitled to the deduction of the amount spent on account of the cost of the repairs to the premises when he has undertaken to bear the cost of the repairs. If the amount is spent by the assessee, otherwise than as a tenant, the amount paid by him on account of only 'current repairs' would be allowable. It was further observed that the latter provision applies to the assessee occupying the premises otherwise than as a tenant, as an owner or mortgagee in possession, and in those cases the deduction is restricted in respect of the 'current repairs' to the premises. So far as a tenant was concerned, it was held that the 'repairs' to the premises would be allowable expenditure.

16. After having considered the arguments advanced by the learned counsel for the parties and examined the decisions cited by them, we are of the view that the assessee's claim for deduction under Section 30(a)(i) has been rightly allowed by the Tribunal. The decisions cited by the learned counsel for the revenue relate to 'current repairs'. There is a clear distinction between the expression 'repairs' and the expression 'current repairs'. It is obvious that the word 'repairs' is much wider than the expression 'current repairs'. This fact has also been taken note of by the Supreme Court in the case of ***Saravana Spinning Mills P.Ltd.*** *(supra).* The expression 'current repairs' is

much more restricted than the word 'repairs' because the latter is qualified by the word 'current'. What the assessee has done in the present case has been construed to be repairs by the Tribunal as a finding of fact. It has not brought about any new asset and more importantly it was not the intention of the assessee to bring about any new capital asset. The expenses that were incurred by the assessee were towards repairing the premises taken on lease so as to make it more conducive to its business activity. Such expenses would clearly fall within the expression of repairs to the premises as appearing in Section 30(a)(i). The legislature has made a distinction between expenses incurred by a tenant for 'repairs' of the premises and expenses incurred by a person who is not a tenant towards 'current repairs' to the premises. This distinction has to be given meaning. Perhaps the logic behind the distinction was that a tenant would, by the very nature of his status as a tenant, not undertake expenditures as would endure beyond his likely period of tenancy or create a new asset. Whereas, an owner may undertake expenditures so as to even bring about new assets of capital nature. It was, therefore, necessary to qualify the expenditure on repairs. The deduction was, therefore, limited to expenditure on 'current repairs' only. It follows, therefore, that the cost of repairs that have been incurred by a tenant in respect of such premises would have

to be allowed under Section 30(a)(i). The question of disallowing such an expenditure and relegating the assessee to claim depreciation under Section 32 does not arise. The assessee has not claimed depreciation. It has claimed deduction under Section 30(a)(i). Once the assessee's claim falls within that provision there is no question of considering the question of applicability of Section 32. Consequently, the question that has been framed is answered in favour of the assessee and against the revenue. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**September 15, 2008**
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