The Commissioner Of Income-Tax vs M/S. Janakiram Mills Ltd on 29 April, 2005

Author: P. Sathasivam

Bench: P. Sathasivam

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/04/2005

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Tax Case (Ref) No. 144 of 1999
and Tax Case (Ref) Nos., 408, 409/1999, 70/2000 and 30/2001
and
T.C.Appeal Nos. 46/2000, 231/2001, 48, 53, 54, 60, 61, 62 to 64, 94, 95, 96, 124, 138, 156, 214, 215/2003, 9, 46, 53, 82, 103, 123 to 125, 195, 202, 212, 224, 250, 262, 277, 285, 312, 317, 327, 342, 363, 364 , 377, 435, 436, 437, 443, 486, 373, 438, 530, 727, 728, 729, 743, 745, 746, 750, 769, 951, 952, 1076, 1081, 1101, 1118, 1120, and 1113/2004
and
T.C.M.P.Nos. 93, 251/2003, 457, 468/2004 etc.

Tax Case No. 144/1999 etc., Batch

The Commissioner of Income-tax,
Madurai. .. Applicant.

-Vs-

M/s. Janakiram Mills Ltd.,
Thenkasi Road, Rajapalayam. .. Respondent.

The above Tax Cases filed under Section 256 (1) of Income Tax Act, 1961 for Reference; and Tax Appeal Cases filed under Section 260-A of Income

Tax Act, 1961 against orders of Income Tax Appellate Tribunal, Madras as stated therein.

!Mrs. Nalini Chidambaram, Senior counsel for Mrs. Pushya Sitaraman (Standing counsel for Income Tax):- For Appellants in all the T.Cs. except T.C.Nos. 62 to 64/2003 and Respondent in T.C. Nos. 62 to 64/2003.

Mr. C. Natarajan, Senior counsel for Mr. N. Inbarajan for Appellant in T.C.No. 62 to 64/2003 and T.C.Nos. 03, 251/2003.

^Mr. N. Quadir Hoseyn:- For Respondent in T.C. Nos. 144, 408, 409/99, 231/2001 and 435/2004.

Mr. P.P.S. Janarthana Raja for M/s Subbaraya Aiyar:-For Respondent in T.C.Nos. 46/2000, 60, 61, 94, 95, 96, 156/2003, 9,53,82,123 to 125, 250, 262, 277, 342 and 436/2004.

Mr. T.N. Seetharaman:- For Respondent in T.C. 30/2001, 54/2003 and 443/2004.

Mr. R. Venkataraman, Senior counsel for Mr. J. Balachandran:- For Respondent in T.C.Nos. 48 and 124/2003.

Mr. J. Balachandar for Mr. S. Sridhar:- For Respondent in T.C.Nos. 53/2003, 46, 312 and 317/2004.

Mr. R. Meenakshisundaram:- For Respondent in T.C.No. 103/2004.

Mr. N. Devanathan:- For Respondent in T.C.Nos. 363 and 364/2004.

Mr. R. Srinivasan:- For Respondent in T.C.No. 224/2004.

No appearance in T.C.70/2000, 138/2003, 212/2004, 285/2004, 327/2004, 486/2004

:COMMON JUDGMENT

(Judgement of Court was delivered by P. Sathasivam, J.,) Since the Tax Case reference and Appeals relate to same question to be considered by this Court, all the above matters are being disposed of by

the following common order.

2. T.C.No. 144/199 (Ref) relates to reference made by Income-tax Appellate Tribunal, Madras Bench-B. By the Reference Application, wherein the Commissioner of Income-tax, Madurai is the applicant, and Messrs Janakiram Mills Ltd., Tenkasi Road, Rajapalayam is the respondent, the Revenue requested the Income Tax Tribunal to refer the following questions of law arising out of the order of the Tribunal dated 19-12-97 to this Court for its opinion. They are:

> "1). Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the expenditure incurred by the assessee during the accounting year on the cost of carding system (Rs.31,22,679/-) was amount paid on current repairs and allowable under section 31 of the Income-tax Act?
>
> 2). Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in directing allowance of the entire amount of Rs.31,22,679/- as revenue expenditure?"

3. For convenience we shall refer the facts in T.C. No. 144/99. The assessee in that case had claimed that the expenditure of Rs.31,22,679/- on replacement of carding system by high production cards, be treated as revenue expenditure for the assessment year 1986-87. The Assessing Officer had negatived the assessee's claim. On appeal by the assessee, the C.I.T. (Appeals), following the decision of the Appellate Tribunal in the cases of ITO v. SRI VARADHARAJA TEXTILES PVT. LTD., (9 ITR 469) and the decision of the Supreme Court in the case of CIT v. MAHALAKSHMI TEXTILE MILLS LTD., (66 ITR 710) held that the expenditure incurred was only for replacement of part of the textile machinery and therefore was allowable as revenue expenditure. Aggrieved by the order of the CIT (Appeals), the department had filed further appeal before the Tribunal. The Tribunal after noting the inspection report and on verifying similar machineries installed in Indira Cotton Mills, Chennai and after following earlier decision of the Tribunal on the same point, has treated the expenditure on carding machine as revenue expenditure and thus allowed the asessee's claim. Inasmuch as the second question raised by the Revenue is covered by the first question, the Tribunal has referred only the first question, as set out earlier, to this Court for its opinion.

4. Heard Mrs., Nalini Chidambaram, learned senior counsel for the Department; Mr. C. Natarajan, learned senior counsel for appellants in T.C.Nos. 62 to 64/2003, 93 and 251/2003; and Messrs N. Quadir Hopeyu, P.P.S. Janarthana Raja, T.N. Seetharaman, R. Venkataraman, J. Balachandar, R. Meenakshisundaram, N. Devanathan, and R. Srinivasan for respondents.

5. The point for consideration is, whether the modernisation/current/repair expenditure is allowable as "revenue expenditure", as claimed by the assessees or the replacement of cards/blow room machinery/combing machinery etc., are to be considered as " capital expenditure", as claimed by the Revenue?

6. The materials placed by both sides show that Textile Mills, largely in Tamil Nadu, have been claiming the expenses relating to purchase of new machinery as current repairs/revenue

expenditure, where the said purchase was as a part of modernisation programme or replacement of old machinery. It is the claim of the Department that the machinery replaced in most of the cases are complete machinery, capable of independent operation. The Tribunal has allowed deduction as current repairs/revenue expenditure on the premise that:

> a. The entire textile mill should be treated as one single plant, and each machinery therefore is only a part of it.
>
> b. Wherever the spindlage or capacity has not increased due to the purchase of the new machinery in the place of the old one, it cannot be said that there is any enduring advantage.

7. Mrs. Nalini Chidambaram, learned senior counsel appearing for the Department, would submit that most of the earlier decisions of this Court have gone on the presumption that what was replaced was a part of a machinery, and not the entire machine itself. For example, Ring Frames, which are complete spinning machines consisting of several spindles, have been erroneously assumed to be parts of machinery, and the expenditure on replacement thereof has been allowed as a revenue expenditure.

8. It is also her claim that the fact that replacement of worn out machinery with new machinery results in an enduring benefit to the assessee has not been considered either by the Tribunal, or by this Court in the decisions rendered earlier. According to her, wherever a new machine is purchased, the assessee is granted depreciation spread over a period of time, since it will result in an enduring benefit to him. This enduring benefit would be there, regardless of whether the assessee purchases the machinery for the first time, or purchases it as a replacement of an old or worn out machine. It would lead to an absurd result if the purchase of a new machine by a first time user were to be treated as a capital expenditure as it results in enduring benefit, but the purchase of the same machine by some one who already owned a similar machine, is treated as a revenue expenditure/current repairs.

9. The Tribunal has been treating the entire textile mill as a single plant, and all the machinery therein as parts of the plant. Unlike continuous casting machinery in the steel industry, or certain other processes where the raw material is fed in one end and the finished product comes out at the other without any intervention in between, the textile mill, even in the case of "composite mills" consist of distinct sections such as blow room, carding, ginning, spinning, weaving and finishing. The goods are normally carried manually after finishing one process to another part of the factory for the next process. There are several mills that do only one or some of the above activities such as carding and ginning or only spinning, or only calendaring and finishing etc. Thus, according to the Department, can a textile mill be treated as a single unit with the various machinery being treated as parts.

The machinery are all capable of independent action, and the fact that the next process is carried on by another machine would not lead to the conclusion that both machines are only parts and not complete machinery by themselves.

10. Learned senior counsel for the Department further pointed out that relief has been granted in many cases on the basis that where the new machinery had the same installed capacity as the old machinery which were replaced, there is no increase in capacity. It must be pointed out that although in theory the worn out machines may have an installed capacity of a certain spindlage or certain production capacity, in practice, since they are old and worn out, they would not be able to keep up the efficiency of work. It is further claimed by the Department that old and worn out machines are more prone to breakdowns due to wear and tear, and thus cannot produce the same quantity of goods in a stated time as new machines. The new machines installed are technologically more advanced than the old replaced machinery and more efficient in terms of quantity and quality of output. The stand of the Department that unless the overall production capacity is increased, any purchase of machinery would only be treated as revenue expenditure is erroneous. The view that any purchase of new machinery in replacement of an old one would be treated as revenue expenditure if there is no increase in production capacity would have adverse effects on the concept of capital and revenue expenditure. It is brought to our notice by the Revenue that in most of these cases, some items of large machinery are changed every year, resulting in a practically new plant in the course of two or three years. Large capital investment in new machinery, merely because it is for the modernisation of a factory cannot be treated as anything other than capital expenditure.

11. It is the further claim of the Department that after the introduction of the concept of block of assets, any sale of depreciable assets, would result in its value being removed from the block, and any addition of new machinery would result in addition to the block. If the removal from the block is reduced, but the addition is treated as revenue expenditure, the value of the block of assets would show a really low picture not in consonance with the real value of the assets. Whereas depreciation is granted at a fixed percentage depending on the type of depreciable asset, taking into account its wear and tear and useful life, the textile mills have sought to take 100% depreciation by a backdoor method of claiming it as current repairs/revenue expenditure. The schedule of depreciation given in the Appendix of the Income Tax Rules specifically mentions items of machinery or equipment eligible for 100% depreciation.

12. Learned senior counsel for the Department also pointed out that the textile mills have treated the purchase of new machinery in their balance sheet as addition to fixed assets, whereas for the purpose of income tax alone, they are claiming it as a revenue expenditure or expenditure on repairs. This shows that it is only for the purpose of avoiding payment of tax that the treatment is given as revenue expenditure, when it is well within the knowledge and belief of the Mills that the purchase of the machinery resulted in acquisition of new assets. While the value of fixed assets in the books of the company would be high, as it would include the value of the newly purchased machinery, the block of assets on which depreciation would be taken, would show a very low figure, as the written down value of the old machinery sold would have been removed, while the value of the new machinery purchased would not have been included. It is also brought to our notice that the textile mills obtain long term loans for the purchase of new machinery from banks and financial institution against the security of such new machines. Such long-term finance will not be provided against items that could be considered only as revenue expenditure. The sum and substance of the argument of the learned senior counsel for the Department is that if the replacement is of a part of a machinery, it would amount to revenue expenditure and wherever new machinery has been

purchased in replacement of an old one, it can only be treated as a capital expenditure.

13. In this connection, the learned senior counsel appearing for the Revenue, by drawing our attention to definition " machinery/plant", relied on a decision of this Court in the case of MIR MOHAMMED ALI (38 ITR 413) which was upheld by the Supreme Court in 53 ITR 165, wherein it has been held that machinery does not cease to be machinery merely because it has to be used in conjunction with one or more machines, nor merely because it is installed as a part of a manufacturing or industrial plant. The learned senior counsel has also brought to our notice a judgement of the Gujarat High Court in KIRAN CRIMPERS (225 ITR 84) wherein it has been held that the term "plant" has not been used under section 32 OF THE income Tax Act, 1961 (hereinafter referred to as "the Act") or the Rules in the wide meaning commonly ascribed to it. The Gujarat High Court has held that since four different terms, viz., buildings, machinery, plant and furniture have been used in section 32, it would follow that the term "plant" has been used in a narrow sense to mean whatever apparatus is used by a person to carry on the business which does not fall under the category of "building", "machinery" or "furniture". Thus, according to the Department, for the purpose of the Income Tax Act, a view cannot be taken that the entire textile mill is a plant.

14. With regard to the claim that the Department has not gone on appeal in respect of the judgments rendered by this Court, holding that the replacement of textile machinery amounted to revenue expenditure, it is stated that the Supreme Court has held in a number of cases that appeals cannot be filed in one assessee's case without filing in respect of another assessee without justifiable cause. It is also stated that all the cases decided earlier pertained to the period prior to the introduction of the concept of Block of Assets with effect from 1988-89 onwards, during which time the fact of no increase in capacity, and the mill being an integrated unit would have a bearing on deciding if the expenditure is capital or revenue. It is also pointed out before us that only in 3 cases, i.e., GITANJALI MILLS (265 ITR

681), TUTICORIN SPINNING MILLS LTD.,(261 ITR 291) and L.S Mills(Unreported) pertained to the period after 1988-89. The Department did not file appeals to the Supreme Court in these cases, as the tax effect in each case was less than Rs.5 lakhs. The Central Board of Direct Taxes has given instructions that in cases where monetary limits are less than Rs.5 lakhs, appeals to the Supreme Court should be avoided except in certain extraordinary circumstances.

15. Learned senior counsel for the Department has also pointed out that while the question of whether the replacement of one or more machines out of the several machinery contained in the mill would be merely a revenue expenditure or capital expenditure may have been acceptable for the past period when the concept of block of assets was not there in the statute, i.e., prior to assessment year 19 88-89, but each and every asset was looked at separately; the situation is now different. It is also their case that in view of Section 2 (11) of the Act, the written down value of the block as a whole has to be taken into account. In a textile mill, the entire block of machinery would fall within a single block of assets, resulting in diminution of the value of the block by the sale value of the old machinery sold, and increase in the value of the block by the purchase price of the new machinery. When each of the textile machinery in question, such as ring frames, speed frames, carding machine, autoconer etc. are purchased for the first time, it is accepted by both parties that it is a

capital asset on which depreciation should be granted. The dispute only comes to play when some of the worn out or out dated machines are sold and replaced with new machines.

16. It is the argument of the Revenue that while under the law as it stood prior to 1988-89, the fact of treating the entire mill as an integrated unit may have had the effect of treating the replacement of machinery as replacement of parts of a larger whole and thus treated as revenue expenditure, once the concept of block of assets has been brought in by the Parliament, from assessment year 19 88-89, whether the mill is an integrated whole or not, whether the replacement of machines resulted in increased capacity or not will have no bearing. When any item belonging to the block is removed, its value is reduced, and if any new item comes in its place, its value is added to the block.

17. The learned senior counsel for the Revenue highlighted that the question of law in the batch is very wide in scope inasmuch as it questions whether the Tribunal was right in treating the replacement of machinery as revenue expenditure. The arguments relating to the concept of depreciation on block of assets are only grounds raised to strengthen the contentions of the Department that the replacement of machinery cannot be treated as revenue expenditure, and to point out how the present situation after assessment year 1988-89 varies from the law as it stood earlier, and therefore none of the case laws cited by and relied on by respondents would have any bearing on the present cases, which all relate to assessment years subsequent to 1988-89. It is also projected by the Revenue that most of the case law on the issue of replacement of textile machinery were rendered in the context of the law as it stood prior to the introduction of the concept of Block of Assets. The few cases that were decided thereafter, were decided on the basis that it is a covered issue, without the fact of the law having been amended being noticed. Thus, the judgements should be treated as having been rendered per incuriam.

18. Before elaborating the contentions raised by various counsel on behalf of the assessees, it is relevant to note that on factual aspect it is their main contention that the entire spinning mill right from Blow Room to the Cone Winding section is an integral plant for which the counsel for the assessees produced several materials and one among them is the report of the South India Textile Research Association (SITRA), Coimbatore. Their letter dated 19-12-2003 which was pressed into service before the Tribunal as well as this Court clearly show that the process of fibre to yarn conversion comprises of various stages and all the processes are inter-linked. It also shows that the output from various intermediate stages of production cannot be sold or marketed and used for other purposes. The following is the text of the letter dated 19-12-2003 by SITRA:

> "THE SOUTH INDIA TEXTILE RESEARCH ASSOCIATION December 19, 2003 TO WHOMSOEVER IT MAY CONCERN It is a Textile Spinning Mill, cotton fibres are converted into yarn. The process of fibre to yarn conversion comprises of various stages as detailed below:
>
> 1. Blow Room:
>
> The raw material (fibres) is opened and cleaned in the Blow Room with the help of various openers and beaters. During this process, the raw material is converted into

lap (rolled sheet form). Majority of the heavier trash particles and microdust in raw cotton are removed in Blow Room.

2. Carding Process:

The blow room laps, are then fed to cards. In the carding process, the fibres are individualised and converted into sliver (Card Sliver). In this process also impurities are removed.

3. Lap Former:

A specified number of Card Slivers are fed into lap preparatory machines to form a spool of lap sheet, which in turn form the feed for the next process (i.e) Combing.

4. Combing Process:

Combing machines remove short fibres and produce a clean and uniform sliver (Comber sliver).

5. Drawing:

In the next sequence, combed slivers are doubled and drafted on machine called Draw Frame. Draw Frames evenout the irregularities in the sliver.

6. Fly Frames:

The Draw Frame Slivers, are fed to fly frames which draft and twist these slivers into roving, and then wound on Bobbins.

7. Ring Frames:

Roving bobbins are fed to Ring Frames which draft and twist the roving to form the final product i.e. yarn. This yarn is wound on cops mounted on spindles in the ring frame.

8. Cone Winding:

The output of the ring frames in the form of cops is fed to Cone Winding machines (conventional winder automatic winder) which remove the various faults in the yearn with the help of Yarn Clearers and convert the yarn in cop form into a convenient form of package called cones. In the post spinning section, besides the cone winding machines, depending upon the requirement of the market, reels and doubling machines (Ring Doublers or TFO Twisters) are also used to convert yarn into suitable packages (Reeled yarn/Doubled yarn).

> We would therefore like to certify that all the above processes are inter-linked and the output from various intermediate stages of production (Carding, Combing and Draw Frames Slivers and Roving) cannot be sold or marketed and used for other purposes. The output from Ring Frames in the form of cops also cannot be sold in the market. In the absence of any of these processing, yarns could not be spun. Only after the yarn is wound and finished into suitable packages, can it be sold in the market. Hence, a spinning mill is considered to be continuous process industry.
>
> Considering these facts, the entire spinning mill, right from Blow Room to the Cone Winding section should be considered as a single integrated plant. Yours faithfully, Sd/- D. Shanmuganandam Assistant Director."
>
> The above conclusion of the SITRA being a specialised body in the field of cotton textile and spinning cannot be ignored lightly.

19. Most of the counsel appearing for the assessees contended that the Appellate Tribunal had rendered factual finding that the expenses related to purchase of machinery parts such as ring frames, simplex machines, doubling machines, cone winder, electronic yarn cleaner, card conversion equipment, speed motors etc., were allowable as revenue expenditure by upholding the finding of the Commissioner of Income Tax Appeals. It is also their claim that considering the factual finding which is same as the one concluded for the immediate preceding year the same cannot be re-agitated before this Court in the absence of any further finding contrary, or material or change of law. The said contention of the counsel for the assessees cannot be brushed aside. It is also brought to our notice that the Income-tax Tribunal had allowed similar claim after conducting personal inspections in the spinning mills, which replaced parts. It is also stated that inasmuch as the question raised now by the department had been settled by series of decisions of this Court as well as the Apex Court and where long standing precedents settled the Law, the Courts would be slow to disturb the said Law unless there are compelling reasons to do so. Learned counsel appearing for the assesses have cited and demonstrated before us number of judgements (decisions)wherein the expenses of similar nature were held allowable:

> 1. Ten Ring 1.T.C.P.No.499 of 1997 dt.14-12-1998 filed Frames by the department against the order of the Income Tax Appellate Tribunal in ITA No.3128/MDS/92 dt. 18-8-93 dismissing the Case of the department involving identical claim.
>
> 2.CIT Vs. GITANJALI MILLS LTD (265 ITR 681) (Mad)
>
> 3. CIT Vs. TUTICORIN SPINNING MILLS (249 ITR 695) (Mad)
>
> 4. CIT Vs. SRI BHAGAVATHI TEXTILES LTD., (207 ITR 226) (Kerala)
>
> 5. CIT Vs. MAHALAKSHMI TEXTILES LTD., 56 ITR 256 (Mad) and 66 ITR 710 (SC)

2. Four set of 1. CIT Vs. SALEM CO-OPERATIVE Card conversion SPINNING MILLS (148 ITR 176)

2. VANAJA TEXTILES Vs. CIT (208 ITR 161)

3. Cone Winder 1. CIT Vs. SRI RANI LAKSHMI GINNING SPINNING WEAVING MILLS (256 ITR 592)

2. TUTICORIN SPINNING MILLS Vs. CIT (261 ITR 291)

3. CIT Vs. SRI HARI MILLS (P) LTD., (237 ITR 188)

4. Electronic 1. TUTICORIN SPINNING MILLS Vs. Yarn Cleaner CIT (261 ITR 291)

2. CIT Vs. SAKTHI TEXTILES (250 ITR 449)."

20. In the following judgements, the expenses of similar nature were held allowable:

"1. CIT Vs. GITANJALI MILLS LTD (265 ITR 681) (Mad)

2. CIT Vs. TUTICORIN SPINNING MILLS (249 ITR 695) (Mad)

3. CIT Vs. SRI BHAGAVATHI TEXTILES LTD., (207 ITR 226) (Kerala)

4. CIT Vs. MAHALAKSHMI TEXTILES LTD., (56 ITR 256 (Mad) and 66 ITR 710 (SC)

5. CIT Vs. SALEM CO-OPERATIVE SPINNING MILLS (148 ITR 176)

6. VANAJA TEXTILES Vs. CIT (208 ITR 161)

7. CIT Vs. SRI RANI LAKSHMI GINNING SPINNING WEAVING MILLS (256 ITR 592)

8. TUTICORIN SPINNING MILLS Vs. CIT (261 ITR 291)

9. CIT Vs. SRI HARI MILLS (P) LTD.,(237 ITR 188)

10. TUTICORIN SPINNING MILLS Vs. CIT (261 ITR 291)

11. CIT Vs. SAKTHI TEXTILES (250 ITR 449) It is also useful to refer the judgements of this Court in the case of TUTICORIN SPINNING MILLS LTD., CIT (261 ITR 291), CIT Vs. KARTHIKEYA SPINNING MILLS (265 ITR 285), CIT Vs. GITANJALI MILLS LTD., (265 ITR 681) and the recent judgement of the Rajasthan High Court in

> CIT Vs. UDAIPUR DISTILLERY CO., LTD.,(268 ITR 451). By applying the ratio of the Hon'ble Supreme Court in CIT Vs. MAHALAKSHMI TEXTILES LTD.,(66 ITR 710) (SC), and in ALEMBIC CHEMICAL WORKS LIMITED Vs. CIT (177 ITR 377 (SC), this Court has held that the expenditure of this nature is revenue expenditure.

21. It is also demonstrated before us that Ring frame and Draw frame cannot work independently. Likewise, Carding machine cannot work independently, but can work only as part of spinning unit. Almost all the decisions cited on the side of the assessees are directly on the issues before this Court, namely, the replacement of machinery such as Carding machine, Ring frame and Draw frame which are only part of a plant which manufactures yarn and therefore allowable as revenue expenditure under the Act. Therefore, the Tribunal was right in allowing a deduction of amount spent on replacement of machinery. This issue has been settled in the following decisions of this Court:

> 1) CIT Vs. TUTICORIN SPINNING MILLS LTD., (249 ITR 694) (Mad)
>
> 2) CIT Vs. GITANJALI MILLS LTD., (265 ITR 681)
>
> 3) CIT Vs. SRI HARI MILLS PVT. LTD(237 ITR 188 (Mad)
>
> 4) VANAJA TEXTILES LTD.,Vs. CIT (208 ITR 161 (Ker)
>
> 5) CIT Vs. SHRI RANILAKSHMI GINNING SPINNING AND WEAVING MILLS LTD (256 ITR 592) (Mad)
>
> 6) CIT Vs. SAKTHI TEXTILES LTD (262 ITR 375)(Mad)

22. Now we shall consider whether the claim is allowable either under Section 31 of Income Tax Act, 1961 as "current repairs" or as "revenue expenditure" allowable under Section 37 of the Act (similar provisions of Section 10 (2) (v) and Section 10 (2) (xv) of the Indian Income Tax Act, 1922. The following judgement of the Supreme Court in the case of CIT Vs. KALYANJI MAJVI & CO., [(1980) 122 ITR 49 at page 53] is relevant:

> ".....The repairs made by the assessee, it is said, cannot be described as "current repairs". Now, this contention rests on the principle that if a special provision covers the case, resort cannot be had to a general provision. It seems to us that if the renovation of the building, the reconditioning of machinery and the removal of debris cannot be described as "current repairs"- and we assume that to be so-the case would be entitled to consideration under section 10 (2) (xv). Section 10 (2)(v) deals with current repairs only. The subject matter of section 10 (2) (v) is "current repairs"

and it appears difficult to agree that repairs which are not "current repairs"

> should not be considered for deduction on general principles or under section 10 (2) (xv). There must be very strong evidence that in the case of such repairs, the

> Legislature intended a departure from the principle that an expenditure, laid out or expanded wholly and exclusively for the purposes of the business, and which expenditure is not capital in nature, should not be allowed in computing the income from business. There is nothing in the language of section 10(2)(v) which declares or necessarily implies that repairs, other than current repairs, will not qualify for the benefit of that principle. We must remember that on accepted commercial practice and trading principles an item of business expenditure must be deducted in order to arrive at the true figure of profits and gains for tax purposes. The Rule was held by the Privy Council in CIT Vs. CHITNAVIS (1932) 2 Comp Case 464 ; LR 59 IA 290; AIR 1932 PC 178 to be applicable in the case of losses, and it has been applied by the Courts in India to business expenditure incurred by an assessee. MOTIPUR SUGAR FACTORY LTD., Vs. CIT (1 955) 28 ITR 128 (Pat) and DEVI FILMS LTD., Vs. CIT (1970) 75 ITR 301 (Mad). The principle found favour with this Court in BADRIDAS DAGA Vs. CIT (1958) 34 ITR 10, 15 (SC) and CALCUTTA CO., LTD., Vs. CIT (195 9) 37 ITR 1, 9 (SC). If the contents of that rule be true on general principle, there is good reason why the scope of Section 10 (2) (xv) should construed be liberally. In our opinion, even if the expenditure made by the assessee in the present case cannot be described as "current repairs" he is entitled to invoke the benefit of section 10 (2)
>
> (xv)."

23. All plant and machineries put together amount to a complete spinning mill which is capable of manufacturing yarn. Hence each replaced machine cannot be considered as an independent one, and no intermediate marketable product is produced. This is evident from the decision in CIT v. COOPERATIVE SUGARS LTD., [235 ITR 343] (Kerala). It is also not in dispute that there is no increase in the production quantity. Replacement of worn out part does not itself being in a new assets and also there is no replacement of whole unit. As rightly argued, purchase as a part of plant and of thing which may independently be used is not decisive test. It must be seen that the replacement is for the purpose of running the mill. No new assets created in the process of replacement of worn out machine.

24. In ADDL. CIT v. INDIA UNITED MILLS LTD. (Bom), the Court held that replacement of worn out doors by fire proof doors and ordinary lighting by fluorescent tubes is revenue expenditure and no advantage of enduring nature acquired. In fact in Circular No.69 dated 27-11-1957 the Board has stated that the correct procedure is that the initial expenditure on the first installation of fluorescent lights, including the expenditure on wiring and fittings should be treated as capital expenditure as it creates an asset and that all subsequent expenditure for replacement of the tubes should be treated as of a revenue nature allowable in toto under Section 37 (1). This principle squarely applies to the cases of replacement of worn out machinery. It is also pertinent to note that the Supreme Court in UCO Bank case [237 ITR 889] (SC)] held that Circulars are binding on the department. Therefore what applies for replacement of fluorescent tubes applies to all replacement of machineries as well. In CIT v. UDAIPUR DISTILLERIES CO. LTD., [268 ITR 451 (Raj)] replacement of old transformer by a new one has been held to be revenue in nature.

25. As discussed earlier, the issues involved in these references and appeals relate to replacement of machineries done in one or more of the several process of a Textile Industry namely Spinning Mill. In the case of spinning mills cotton fibres are converted into yarn and only after the yarn in wound and finished into suitable packages the same can be marketed. Considering the stages of process and the nature of process involved and the facts that the output of intermediary product is not marketable and further the fact that the output of one process becomes the input of the next process thereby making the entire process as an integrated one. The process involved in a spinning mill may be briefly summarised as under:

1. Mixing

2. Blow Room

3. Carding

4. Combing

5. Drawing

6. Simplex (Ring frames)

7. Cone Winding

8. Reeling

9. Packing In the above process raw cotton is mixed in the mixing room and then the impurities are removed in the Blow room and after entering further processes cotton is converted into yarn and then packed. This Court in MAHALAKSHMI Mill's case [56 ITR 256 (Madras)] (supra) has held that replacement of worn out parts of Textile Machinery by introducing Casablanca High Drafting system is a revenue expenditure. While doing so, the Court observed at page 262 of the judgement that "when it came to the question of replacing the worn out roller stands, the assessee found the old type of replacement parts could not, therefore be secured, and the Tribunal in the statement of case also refers to the fact that wherever such parts were available; they were costlier than the parts produced by a different manufacturer that is the Casablanca company.

Though according to the manufacturers, the provision of these parts was referred as the Casablanca, High Drafting system; it virtually amounted to nothing more than the replacement of certain parts, which however were a modified version of the older parts. The progress of textile technology necessarily discards and unwieldy parts and seems to replace them with lighter and more efficient parts.

26. This Court in recent times had occasions to decide on the issue of replacement of textile machinery whether it is in the capital field or Revenue field and it has consistently held that the replacement of textile machinery in a Spinning Mills are revenue expenditure.

27. Further this Court in GITANJALI MILLS LTD.,v. COMMISSIONER OF INCOME TAX, reported in 265 ITR 681 (Madras) held that the ring frames have no independent existence or utility unless worked with other machines, that its function is ancillary, that it is only a supporting machine, used for drafting twisting and winding the yarn, that they by themselves are not machines capable of independent function, and therefore the cost incurred on such ring frames is not dissimilar in nature and character say to the replacement of a radiator or a carburettor in a motor engine.

28. Further, the Kerala High Court in the case of VANAJA TEXTILES v. COMMISSIONER OF INCOME TAX [208 ITR 161 (Kerala)] has held that expenditure on modernisation allowable as revenue expenditure. In the Textile industry old machineries having functioned for few decades were either worn out or where in the process of getting worn out and hence necessitated replacement in order to keep pace with the competing world. Therefore, the High Court after referring to various decisions of English Courts held that "In these cases also as in the case of ALEMIC CHEMICAL WORKS (1989) 177 ITR 377 (SC), the comprehensive scheme of modernisation and rehabilitation is for improvement in the operation of an existing business and its efficiency and profitability not removed from the area of the day-to-day business of the assessee's established enterprise. There is no fresh or new venture in the scheme of modernisation envisaged by the assessee. Further the Court held that it is not the largeness of the sum that it is important but the nature of the expenditure and therefore held that the expenditure in these field were revenue in nature.

29. All the machineries though independent on their own, are all part of an integrated whole, namely, the textile plant. What is fed in as cotton bales, after going through the series of processes, ultimately results in cotton yarn which alone is the marketable commodity. It is convincingly argued before us that the said principle applies to sugar industries as well, where the ultimate product is sugar. This proposition has been upheld in RHODESIAN RAILWAYS (1 ITR 227) (PC) (1933) through MAHALAKSHMI TEXTILES MILLS LTD., (66 ITR 710) (SC) (1967) till UDAIPUR DISTILLERY CO. LTD., (268 ITR

451) (Rajasthan) (2003) following the Supreme Court decisions in MAHALAKSHMI TEXTILES 66 ITR and ALEMBIC CHEMICAL WORKS (177 ITR 377 (SC). At this juncture, the letter dated 19-12-2003 of SITRA, being the specialised body in the field of cotton textile and spinning is to be taken note of wherein the Body has reported that entire operation right from Blow Room to Cone Winding section is to be considered only as a single plant.

30. With reference to the contentions of the learned senior counsel for the department, it is stated that whether a particular expenditure is in the capital field or revenue field cannot be decided on the basis of the inclusion in the depreciation schedule. The depreciation schedule will be relevant only after the question as to whether the expenditure is in the revenue field or capital field. If the expenditure is found to be in the capital field and is eligible for depreciation, then only the

depreciation schedule is to be looked into for determining the rate at which depreciation can be granted. If in the alternative it is found that the expenditure is in the revenue field, the question of referring to the depreciation schedule for finding at the rate of depreciation will not arise. In the circumstances, it is the claim of the assesses that the reliance of the revenue on the depreciation schedule to support their contention is misconceived and does not, in any way, advance the case of the department. As rightly pointed out, the Revenue has not brought out any error either in law or on facts in the decision rendered by the Tribunal.

31. The department, in the course of their arguments, relied heavily on MADRAS CEMENTS case, reported in 255 ITR 243 and BALLIMAL NAVAL KISHORE v. CIT (224 ITR 414) (SC). The following observation in the former decision is relevant: (page 248) ".....Replacement is different from repair. Replacement implies the removal or discarding of the thing that was in use, by a different or new thing capable of performing the same function with the same, lesser or greater efficiency. The replacement of a section in a series of machines which are interconnected, in a segment of the production process which together form an integrated whole may, in some circumstances, be regarded as amounting to repair when without such replacement that unit in that segment will not function. That logic cannot be extended to the entire manufacturing facility from the stage of raw material to the delivery of the final finished product."

In the above case (Madras Cements case), what the assessee has done is to discontinue the use of four old mills which had been installed about 10 to 15 years earlier, and had installed at a different location a new cement mill which was technologically more advanced, was more energy efficient and which could make a qualitatively superior produce. What was done by the assessee was not to repair the cement mill that it had already installed. The existing mill was completely discarded. A new mill was established at a different location. In such a circumstance, the Division Bench held that the assessees claim that the installation of the new Combidan cement mill was a "repair" to the whole of the cement factory itself, is not a claim which falls within the scope of Section 31 (i) of the Act. According to the Division Bench, the new mill was by itself an integrated mill and this new mill was meant to be used at the stage where the clinker had been obtained from the limestone. It is only after the clinker was subjected to milling that the final marketable product, namely, cement was to be obtained. Such a new cement mill is incapable of being regarded as constituting repair to all the earlier stages in the manufacture of cement. In such a circumstance, the Division Bench held that in pursuance of a modernisation programme whereby four existing cement mills which were considered outdated by the assessee and were replaced by this new mill, was an amount paid on 'current repairs' and was allowable under section 31 of the Act. Accordingly, the Division Bench answered the referred question in favour of the Revenue and against the assessee. As rightly pointed out by the learned counsel for the assessees, in that case it was not replacement of machinery but setting up of a unit in a geographically new location. Hence, the factual position in that case is different and it has no application to the facts of the cases on hand. Hence, the said decision relied on by the Revenue is not applicable to the cases on hand.

32. As rightly pointed out, in the case of BILLIMAL NAVAL KISHORE Vs. CIT (224 ITR 414) (SC), the facts were totally different that a ginning factory was converted into a cinema theatre in 1945 , that the theatre had to be closed during the period from 1960-1961 for effecting the extensive

repairs, and that what the assessee did was not mere repairs but a total renovation of the theatre. Hence the case in that decision stands no comparison with the facts of the cases on hand.

33. It is the further contention of the department that since the machineries are new, have independent function and are of enduring nature, and that therefore, the expenditure is capital in nature. To substantiate their claim, they relied on the decision in CIT Vs. MADRAS CEMENT [255 ITR 243] (Madras) (cited supra) which we have already discussed. As rightly pointed out by the learned counsel for the assesses, the argument of the counsel for the Department that the machineries are new and have independent function and are of enduring benefit are no longer relevant in view of the categorical decision of the Supreme Court in ALEMBIC CHEMICAL WORKS CO. LTD., Vs. CIT [1 77 ITR 377] SC) wherein it has been held: (page 390 & 391) "The rapid strides in science and technology in the field should make us a little slow and circumspect in too readily pigeon-holing an outlay such as this as capital.....

...There is also no single definitive criterion which, by itself, is determinative as to whether a particular outlay is capital or revenue. The once for all payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a common sense way having regard to the business realities. In a given case, the test of 'enduring benefit' might break down".

The Supreme Court has also held at page 386 that "The idea of "once for all"

> payment and "enduring benefit" are not to be treated as something akin to statutory conditions; nor are the notions of "capital" or "revenue" a judicial fetish. 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.
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> 34. The learned counsel for the respondents drew our attention to a decision of the Supreme Court in CIT v. PODAR CEMENTS LTD., [226 ITR 625 (SC) and submitted that it is now well settled that an ongoing Act like the Income-tax Act has to be interpreted taking note of the advancement in science and technology and not by the old views. Their Lordships have held at page 647:
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> "At this juncture, we can also refer to the judgment cited by Mr. Syali regarding updating construction of the words used in the statute. In State (through CBI New Delhi) v. S.J. Choudhary AIR 1996 SC 1491,1494; (1996) 2 SCC 428, this Court has quoted the following passage with approval in support of updating construction: (page 433 of [1996] 2 SSCC): "Statutory Interpretation by Francis Bennion, 2nd Edn. Section 288 with the heading "Presumption that updating construction to be given" states one of the rules thus: (p. 617) xxx xxx (2) It is presumed that Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an

> updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

xxxx In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also further, stated thus (p 618-619) In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as 'a living constitution', so an ongoing British Act is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of a n enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials." In this connection, the learned counsel for the assessees invited our attention to the observations of the Supreme Court in (1987) 1 SCC 3 95 M.C. MEHTA v. UNION OF INDIA:

> "As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to be Static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy".

In the cases under consideration by the Hon'ble Bench, it is admitted that there is no capacity addition. The replacement has been made only to restore the machinery to its original state of efficiency so that the entire integrated manufacturing unit which is considered as a profit-making apparatus functions efficiently and produces quality products. Therefore the concept of 'current repairs', 'modernisation' and 'expenditure laid out or expended wholly and exclusively for the purpose of the business' have to be interpreted following the principle of updating construction taking note of the business needs and commercial expediency especially in a competitive business environment created by the globalization and not by applying old concepts of what is capital and what is revenue. The path-breaking decisions in Empire Jute (supra) and Alembic Chemicals (supra) have paved the way for such an interpretation.

35. In CIT v. COOPERATIVE SUGARS LTD. [235 ITR 343 (Ker)] it has been held in Para 9 and 10 as under:

"The sugar mill is a gigantic plant. The AO should not have been swayed by the extent of expenditure incurred on major components purchased for replacing the old ones. The vital question is whether the sugar mill can work in the absence of machinery, expenditure incurred on which is claimed by the assessee. The question has to be answered in the negative. For the manufacture of sugar, all the machinery claimed are necessary. No doubt the expenditure was incurred on the principal components of the sugar mill, still, however, it would be wrong to hold each machinery as an independent unit. All machinery put together completes the sugar plant. We therefore entirely agree with the view taken by the Tribunal.

...No doubt, expenditure was incurred on substantial replacement, but the fact remains that the sugar plant was there and the same plant existed even after replacement and, therefore it is wrong to say that any new asset of enduring nature has come into existence. Whether or not a new asset has come into existence this question has to be considered vis-a-vis the integrated sugar plant and not vis-a-vis each integral part of it. When expenditure incurred on technical know-how on consideration of "once for all payments" was held to be the expenditure as revenue in nature in the case of Alembic Chemical works (supra), we see no reason why expenditure incurred on purchase of new machinery to ensure sound functioning of the sugar mill to replace the old ones, should not be held as revenue expenditure."

The above decision was dissented from in the MADRAS CEMENT's Case (supra) because Their Lordships felt that the language of section 31 would not support such a construction. It is relevant to submit that though the words 'machinery maintenance' was used there, nowhere in the Kerala decision any particular section was mentioned to support its conclusion. It is also relevant to submit that this Court subsequent to Madras Cement's case, in CIT v. GITANJALI MILLS LTD., [265 ITR 68 1 (Madras)] allowed the expenditure on replacement of worn out machineries as revenue in nature after reframing the question by substituting Section 37 instead of Section 31. This will show that the expenditure under consideration can fall to be considered under 'current repairs' or as an 'expenditure laid out or expended wholly and exclusively for the purpose of the business'.

36. It is brought to our notice that various High Courts have held that expenditure incurred in the replacement of a Petrol engine by a Diesel engine is revenue in nature. Though the Diesel engine is independent machinery with an independent function replacement of it has been held to be revenue expenditure in the following decisions:

1. HANUMAN MOTOR SERVICE v. CIT (66 ITR 88) (Mys)

2. CIT v. KHALSA NIRBHAI TRANSPORT CO. (P) LTD. (82 ITR 741 (P & H).

3. ADDL.CIT v. DESAI BROS (108 ITR 14 (Guj)

4. NATHMAL BANKATLAL PARIKH &CO. v.CIT (122 ITR 168 (AP-FB)

5. CIT v. POLYOLEFINS INDUSTRIES LTD (169 ITR 538)(Bom)

6. CIT v. HINDUSTAN SANITARYWARE INDUSTRIES LTD. (106 CTR 268) (Cal)

7. CIT v. TEA ESTATE (P) LTD., (198 ITR 535 (Cal)

8. CIT v. MOHD. ISHAQUE, MOHD. GULAM (210 ITR 817)(MP) 9. CIT v.

JAFARBHAI AKBARALI & BROS (211 ITR 496)(Bom)

37. Regarding the argument relating to "block of assets", it is the claim of the learned counsel for the assesses that the said principle or object of introduction of the above concept is totally not applicable relating to the nature of expenditure incurred by the respondent. These provisions were introduced from 2-4-1987 as defined under Section 2 (11) of the Income Tax Act, 1961 and they are in operation on different field. It is stated that they were intended to replace the provisions on depreciation of capital assets. The block of assets concept were introduced with view to streamline the excess depreciation allowed and to allow terminal depreciation. When the block of assets concept were introduced, the provisions relating to terminal depreciation and the profit result from sale of assets, which were originally considered under section 32 (1) (iii) and 41 (2), were suitably amended to fall in line with the proposed simplification of the concept of block of assets. The circular describing the concept of block of assets is explained by the Centra l Board of Direct Taxes by Circular No. 469 dated 23-09-1996 reported in 162 ITR St.24. In the instant case, no acquisition of any new asset, much less capital of any enduring advantage resulted to the assessee respondent. The assessees replaced the worn out part of machineries without discontinuing its production activities. No claim for depreciation was ever made before any authorities either by the assessees or by the revenue to consider the question as block of assets nor was there any necessity to do so. The department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of block of assets of concept. It is, therefore stated that such question does not arise out of the order of the Appellate Tribunal for considering the same by this Court under Section 260A. It is submitted that no such question was also raised in the Tax Case App eal. (Vide DEPUTY COMMISSIONER OF INCOME TAX v. VELLORE CO-OPERATIVE SUGAR MILLS LTD., (242 ITR 170) (Mad), CIT v. TATA CHEMICALS LTD., (256 ITR 395 at 398) (Bom), CIT v. DINERS CLUB INDIA LTD., (248 ITR 679 at 680) (Bom) and M. PAPPU PILLAI v. ITO (243 ITR 726 at 730) (Ker). It is submitted by the respondents that they incurred expenditure for replacing the worn out machineries of its Textile Mill in order to maintain its production activity without break down and keep pace with the requirements of the industry. Further by incurring the said expenditures it will be evident from the facts that the installed capacity of the mill has not enhanced or increased in any manner and hence the question of the respondents getting any enduring benefit does not arise. The revenue has accepted that the machineries replaced in a textile mill are part of an integrated process in the unit. It will be pertinent here to note that the question of the depreciation allowance comes under the ambit of section 32 of the Income Tax Act, 1961, whereas the claim made by the assessees falls under section 31 or 37. It is submitted that the judgments of various High Courts dealing with this question is uniform falling in line with the decisions of this Court. Hence the interpretation of an All India Legislation like the Income Tax Act being an uniform one the revenue had not placed any fresh

material or evidence to take a fresh look on the self same issue. Further, the machineries replaced were not independent machineries capable of function independently and that they are inter-dependent in an integrated process. This factual finding is not rebutted by the revenue, and hence this fact is undisputed and binding on the Department. In this connection, it is to be noted that the law relating to the block of assets concept, which was introduced in the year 1987, remained same even during the assessment year under consideration in view of the legal position that the nature of the claim was to be considered as allowable as expenditure.

38. It is also relevant to note that in the Scheme of the Act, Section 31 deals with 'current repairs', Section 32 deals with 'depreciation on assets used for the purposes of business' and Section 37 deals with allowance of 'business expenditure' not in the nature of capital or personal expenditure. The contention of the Department seems to revolve on the fallacious ground that these three sections operate alternatively. Rather, they have been conceived in a manner that they function independent of each other. Hence, this argument of the Department would fall like nine-pins the moment the operation of the Sections are considered in their own right. Assuming for a moment, that the learned senior counsel's arguments were correct, then Sections 31 and 37 exists even after the introduction of 'block of assets' concept and have not become otiose or redundant. In other words, with the introduction of 'block of assets', Sections 31 and 37 according to the Department has become non-existent. Even otherwise, this Court in GITANJALI MILL's case [265 ITR 681], accepted the claim of the assessee for the assessment year 1990-91, i.e., subsequent to the introduction of 'block of assets' concept.

39. The question whether an item of expenditure is capital or revenue is not determined by the treatment given in books of accounts or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. It has been held in the following cases for the purpose of income tax which is concerned with determining the real income, the entries in a balance sheet required to be maintained in the statutory form is not conclusive:

1) UCO BANK v. CIT (240 ITR 355) (SC)

2) KEDARNATH JUTE MFG CO. LTD. Vs. CIT (82 ITR 363) (SC)

3) CIT vs. SOUTHERN ROADWAYS LTD., (265 ITR 404)(Mad)

4) CHEMICALS & PLASTICS LTD.,v. CIT (2002) (125) Taxman 648 (Mad).

40. Finally, almost all the counsel appearing for the assessees have brought to our notice that the department having accepted similar decisions on earlier occasions, particularly in the case of same assessees, they are not justified in challenging the same without just cause. It is also contended on the side of the assessees that the revenue has not appealed to the Supreme Court in several cases including Jayaram Mills Limited and Geetanjali Mills Ltd., and also stated that any of the cases where this Court has decided against them, the Revenue has not filed any appeal to the Supreme Court. By drawing our attention to the decision of the Supreme Court in BERGER PAINTS INDIA LIMITED v. Commissioner of Income Tax [266 ITR 99](SC), it was argued that the present set of

appeals by the Revenue is not maintainable. In DEPUTY COMMISSIONER OF INCOME TAX v. VELLORE COOPERATIVE SUGAR MILLS [242 ITR 170](Mad), this Court has allowed that where a question has already been settled by Court, appeal arising out of the same question is not maintainable. In UNION OF INDIA v. SATISH PANALAL SHAH [249 ITR 221], the Supreme Court, while depricating the revenue in not filing appeal against the previous orders and challenging the same in one year, held: (page 222) "If the Revenue did not accept the correctness of the judgment in the case of PRADIB RAMANLAL SHETH [1993] 204 ITR 866 (Guj), it should have preferred an appeal thereagainst and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessees without just cause..."

Similar view has been expressed by the Supreme court in CIT v. NARENDRA DOSHI [254 ITR 606] (SC); and CIT v. SHIVSAGAR ESTATE [257 ITR 59] (SC). It is also worthwhile to refer a decision of the Supreme Court in BERGER PAINTS INDIA LTD., v. C.I.T [266 ITR 99] (SC), wherein the Supreme Court has held that the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause. It is not in dispute that the very same issue/point has been considered by this Court in various decisions in favour of the assessees and against the Revenue, admittedly, those decisions have not been taken up by way of appeal to the Supreme Court. In such a circumstance, the objection of the learned counsel for the assessees is wellfounded.

41. Under these circumstances, in the light of the factual details as demonstrated before us, supported by acceptable documents and the report of the specialised Body like SITRA and also considering various judicial pronouncements on the issue and in view of the time-tested law laid down in MAHALAKSHMI TEXTILE's case [Vol.66 ITR 7 10] (SC), we hold that the claim of the assessees that replacement of parts of textile mill is revenue expenditure is justified and deserves to be upheld. Based on the submissions and arguments and in consonance with the decisions of the Supreme Court and this Court, as discussed above, we answer all the questions raised against the Revenue in favour of the assessees. Consequently, the References are answered accordingly and dismiss all the Appeals filed by the Revenue and allow the Tax Appeals filed by the assessees. No costs. Consequently, all the miscellaneous petitions are closed.

R.B. Index:- Yes.

Internet:- Yes.

To:-

1. The Income-tax Appellate Tribunal, Madras.

2. The Commissioner, Income-tax, Madurai.