Commissioner Of Income Tax vs M/S. Viswams on 15 April, 2019

Author: Vineet Kothari

Bench: Vineet Kothari, C.V.Karthikeyan

1 Judgement dated 15 .04.2019 in T.
1929 to 1937 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.04.2019

DATED: 15.04.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos. 1929 to 1937 of 2008

Commissioner of Income Tax
Madurai.

Appellant/Respondent in all T.C.A.Nos.

Vs.

M/s. Viswams — Respondent/Appellant in T.C.A.Nos. 1929 & 1930 of 2008

Shri Rm K Viswanatha Pillai & Sons

Respondent/Appellant in
T.C.A.Nos. 1931 & 1932 of 2008

M/s. Aremkay

Respondent/Appellant in T.C.A.Nos. 1933 & 1934 of 2008

M/s. Kajah Enterprises (P) Limited.,
(Successors of Rajah Company)
64, South Car Street
Tirunelveli Town
PAN : AABFR1306D

Respondent/Appellant in T.C.A.No. 1935 of 2008

Shri K. Sivakumar

Respondent/Appellant in T.C.A.No. 1936 of 2008

Shri K.V. Nellaiyappan

Respondent/Appellant in T.C.a.No. 1937 of 2008

PRAYER IN T.C.A.No. 1929 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1460/Mds/2007.

PRAYER IN T.C.A.No. 1930 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.2164/Mds/2007.

PRAYER IN T.C.A.No. 1931 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1457/Mds/2007.

PRAYER IN T.C.A.No. 1932 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1458/Mds/2007.

PRAYER IN T.C.A.No. 1933 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order

of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No. 2165/Mds/2007.

PRAYER IN T.C.A.No. 1934 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1461/Mds/2007.

PRAYER IN T.C.A.No. 1935 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1456/Mds/2007.

PRAYER IN T.C.A.No. 1936 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1459/Mds/2007.

PRAYER IN T.C.A.No. 1937 of 2008: Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.03.2008 made in ITA No.1462/Mds/2007.

For Appellant in all T.C.A.Nos. : Mr. M.Swaminathan
Senior Standing Counsel

For Respondent in all T.C.A.Nos. : Mr.M.P.Senthil Kumar

COMMONJUDGMENT

(Delivered by C.V.KARTHIKEYAN, J.)

The Revenue had filed these Appeals against the order of the learned Income Tax Appellate Tribunal dated 14.03.2008 allowing the Appeals filed by the Asessee with respect to the Assessment Years 2002-2003 and 2003-2004. These Appeals had

admitted by a Co-ordinate Bench of this Court on 16.12.2008 on the following substantial questions of law:-

> "(i). Whether in the facts and in the circumstances of the case, the Tribunal was right in holing that expenditure on construction of building in a leasehold premises would amount to revenue expenditure, contrary to the clear provisions of Explanation 1 to Section 32(1) of the Income-tax Act?; and
>
> (ii). Whether in the facts and circumstances of the case, the Tribunal was right in holding that even though the introduction of Explanation 1, to Section 32 was not brought to the notice of this Court in the case of Hari Vignesh Motors (282 ITR 338) and the appeal was dismissed as

> covered by the Supreme Court Judgement in the case of Madras Auto Service (233 ITR 468) for a year subsequent to the amendment, it would form a binding precedent?"

2. Since common questions of law are involved in all t Appeals, the Appeals are taken up together for discussion and consideration.

3. The brief facts in T.C.A.No. 1931 of 2008 arising w respect to a partnership Firm Shri Rm K Viswanatha Pillai and Sons is discussed herein as being illustrating of the facts of all other Appeals also.

4. The Assessee was a firm carrying on business Tirunelveli and during the relevant Assessment Year had debited a sum of Rs.2,99,36,364/- as 'maintenance' allowance. Th taken on lease a building which consisted of RC structure upto third floor at T.Nagar, Chennai and thereafter, the firm pu further construction raising the building upto 5 floors. The cost construction and the cost of interior improvements were debited under the head 'maintenance'. The Assessee's clai

considered by the Joint Commissioner of Income Tax, who gave a direction under Section 144(A) holding that the expenditure has to be considered as Revenue since the Assessee does not own the premises and consequently, did not get to enjoy a capital asset. The CIT (Appeals) considering Explanation 1 to Section 32 held that the said Explanation specifically provides that where such expenditure is incurred in a premises taken on lease, the said structure or building is deemed to be owned by the Assessees. Consequently, what was material was the nature of the expenditure and not the ownership of the premises. While holding so, the CIT (Appeals) held that the Judgement relied on by the Assessees in CIT Vs. Madras Auto Services Private Limited., (1998) 233 ITR 468 (SC) would not apply to the facts of the present case since it related to the Assessment Year 1968-1969, which was prior

to the insertion of Section 32(1A) with effect from 01.04.1970 and its substitution by Explanation 1 with effect from 01.04.1988. The CIT (Appeals) held that the expenditure has to be treated as a capital expenditure since the same had been incurred for the purpose of bringing into existence an asset providing enduring advantage for a considerable period of time. The relevant portion of the order of the CIT (Appeals) is quoted below:-

> "The main concern of this group M/s. RMKV Pillai and Sons took one premises at Door No. 125 to 127 at North Usman Road, T.Nagar on lease for 20 years from the following persons. Shri K.Viswanathan, Shri K.Shivakumar, Shri. K.Ponnanand, Shri.K.Mahesh, Shri N.Viswanathan and Shri N.Manickavasagam. M/s. RMKV Pillai and Sons constructed a 5 storeyed building again for a show room on the unfinished RCC structure constructed upto 3 storey in the said premises. A part of the premises was sub leased to the assessee firm for 19 years. The cost of construction of the show room in both the places mentioned earlier was allocated among the users of the premises and accordingly claimed a sum of Rs.33,59,142/- and debited the same under head "maintenance". The assessee's claim was considered by the then Joint Commissioner of Income Tax who gave a direction under Section 144A holding that the expenditure has to be considered as revenue since the assessee does not own the premises and therefore does not get to enjoy a capital asset and while so holding reliance was placed on the decision of the Apex Court of CIT vs. Madras Auto Services (P) Ltd., (1998) 233 ITR 468.

The similar issue had arisen in the case of the main concern M/s. RMKV Pillai and Sons and assessee's detailed submissions on all aspects of the matter and the allowability of the claim had been discussed at length in my order u/s 263 for A.Y. 2003-04 in that case. The assessee's submission in response to notice u/s 263 is also on the same line as in the main case. Both the assessee as well as the Joint Commissioner who allowed the claim u/s 144A were oblivious of Explanation 1 to Section 32 which provides

"Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

There are other differences as well between the facts of this case and that of Madras Auto Service (P) Ltd. In the latter case the transaction was at arms length between two strangers whereas in the instant case the lessor and lessee are the same. Secondly, in the latter case the assessee derived advantage of concessional rent for a period of 39 years by spending a nominal sum on reconstruction whereas in

the instant case no such benefit or concession has been obtained by the assessee firm on revenue account and rather the lessor gets to own value property at the expense of the assessee.

After the insertion of Explanation 1 to Section 32 it is immaterial whether expenditure has been incurred in a leased premises as Explanation specifically provides where such expenditure had been incurred the Act deems that the said structure or building is owned by the assessee. Therefore what is material is the nature of expenditure and not the ownership of the premises. Following the definition of capital expenditure as first mentioned in the case of New Shorrock Spinning and Manufacturing Co. Ltd.,

(30 ITR P 338) which has been widely quoted and approved by the Apex Court in the case of Ballimal Naval Kishore and Another v. CIT 224 ITR pg 414. The construction expenditure has to be treated as capital expenditure since the same was incurred for the purpose of bringing into existence a new asset and also obtaining a new advantage for a considerable period."

5. The Assessee then took the matter before the Income Tax Appellate Tribunal. By a common Judgemen 14.03.2008, the Tribunal allowed the Appeals. The rea the Tribunal is given below:-

"9. We have considered the rival submissions carefully in the light of the material on record. Sec. 144A reads as under:-

"144A. A Joint Commissioner may, on his own motion or on a reference being made to him by the (Assessing) Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the

nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the (Assessing) Officer to enable him to complete the assessment and such directions shall be binding on the (Assessing) Officer.

Provided that no directions, which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation: For the purposes of this Section, no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be direction prejudicial to the assessee."

A reading of the above provision very clearly shows that direction issued by the Jt.CIT are binding on the Assessing Officer. The only two riders provided in the powers of Jt.CIT., are (i) to issue any directions, and if the directions are prejudicial to the Assessee, then opportunity be allowed to the Assessee and (ii) that no direction can

be issued on the lines in which an investigation should be conducted. Admittedly, the Jt.CIT had very clearly issued the direction that the expenditure incurred by the Assessee should be allowed as revenue expenditure. Therefore, the Assessing Officer was bound to follow such direction. However, we further find that the CIT has dealt with this issue in his order passed under Sec. 263 of the Act, the relevant para of which reads as under:-

"The construction put by the Assessee on 144A r.w.s. 263 is not borne out by the plain words of the relevant section. The act no where says that the Joint Commission cannot commit any mistake of either facts or law and Commissioner's power of revision does not extent to a case which has been completed as per his direction. The legal provision is just the opposite of what has been argued by the Assessee. Explanation to section 263 clearly says that an order by the Assessing Officer shall include an order of assessment made by the Asst. Commissioner or Deputy Commissioner or the Income Tax Officer on the basis of the directions issued by the Joint Commissioner u/s. 144A. Since in the

instant case the assessment completed u/s. 143(3) as per the direction of the Joint Commissioner is found to be erroneous, the reversionary power of the Commissioner is rightly invoked u/s. 263."

We agree with the above observations of the CIT because Explanation to Section 263(1) reads as under :-

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any

order passed therein by the Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation.- For the removal of doubts, it is hereby declared that, for the purposes of this sub- section,-

(a) an order passed 4 on or before or after the 1st day of June, 1988] by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or the Income-tax Officer on the basis of the directions issued by the Deputy Commissioner under section 144A;

(ii) xxxxxx xxxxx xxxx xxxx

The above Explanation makes it clear that the power of revision extends even to the Assessment Orders which had been passed on the basis of the directions issued by the JCIT under Section 144A. Therefore, the CIT had power to revise even the Assessment Orders before us. However, still the issue is covered by the decision of the Hon'ble High Court in the case of Hari Vignesh Motors (P) Ltd., (supra) and in that case the Asst. Year involved was 1997-98,

whereas Explanation (1) to Sec. 32(1) was introduced by Taxation Law (amendment and Miscellaneous Provisions) Act, 1986 with effect from 01.04.1988. We would not

like to comment as to whey the new law was not brought to the notice of the Hon'ble High Court. But the fact which has come to our notice as admitted by the Id. Departmental Representative is that no appeal has been filed against this decision before the Hon'ble Supreme Court. We, at Tribunal, are bound by the decision rendered by the Hon'ble Jurisdictional High Court and, therefore, following this decision, we decide this issue in favour of the Assessee. In these circumstances, we quash the revisionary order passed by the CIT. Since the facts in all these appeals are identical, all the revisionary orders passed by the CIT against which the Assesssees have come in appeal before us are quashed.

10. These appeals are allowed.

11. ITANos.2164to 2167/Mds/2007: In these appeals, the Assessee has raised the following common ground:-

"The CIT (Appeals) erred in not following the jurisdictional Madras High Court decision in the case of Hari Vignesh Motors Pvt. Ltd., (282 ITR 338) and the decision of the jurisdictional Bench of the

ITAT in the Assessee's group case for the Asst. Year 1996 and thus erred disallowing the expenditure Rs.29,96,947/- (total expenditure disallowed

> Rs.31,54,681/- less depreciation Rs.1,57,734/-) claimed as revenue by the Assessee."
>
> 12. After hearing both the parties we hold that since we have already quashed the revisionary orders and the assessments made in pursuance of such revisionary orders have to be cancelled, we set aside the order of the CIT (Appeals) and allow these appeals."

6. Nothing on merits about depreciation was discussed by the Tribunal. Therefore, the Revenue is in Appeals before us under Section 260-A of the Act.

7. Heard arguments advanced by Mr.M.Swaminathan, learned Senior Standing Counsel for the Mr.M.P.Senthil Kumar, learned counsel for the Assessees.

8. The main thrust of the Mr.M.Swaminathan was that the Tribunal had relied on the earlier

Judgment of this Court in CIT Vs. Hari Vignesh Motors (P) Limited., (2006) 282 ITR 228 (Madras), wherein similar circumstances, this Court had followed the ratio laid down in CIT vs. Madras Auto Service (P) Limited., (1998) 233 ITR 468 (SC) and had allowed the appeal of the Assessees. Unfortunate Explanation 1 to Section 32(i) which was introduced by a Taxation Law (Amendment and Miscellaneous Provisions) Act 1986 with

effect from 01.04.1988 had not been discussed in Hari Vignesh Motors (P) Limited., cited supra. Moreover Madras Auto Service (P) Ltd., cited supra dealt with the Assessment Year 1968-1969 before the insertion of Explanation 1 to Section 32(1). Mr.M.Swaminathan therefore urged that the order of the Tribunal requires interference since the Explanation 1 to Section 32(1) of the Act very clearly provides that where any construction is put u for the purpose of business in a premises which had been taken out on lease, then it should be deemed to be a capital expenditure since it gives enduring benefit to the Assessee as if he was the owner of the building.

9. It was further argued that in the present case admittedly, the Assessees had taken on lease a building which originally consisted of two floors and a partially completed third

floor. The Assessee had put up further construction raising the building up to the fifth floor. Further the Assessee also i huge expenditure in interior renovations and these constructions /renovation were directly related to the business of the Assessee and consequently, the total expenditure of Rs.2,99 incurred towards construction/renovation/ or improvement of the building can only be considered as capital expenses.

10. This argument had been very seriously disputed by Mr.M.P.Senthil Kumar, learned counsel for the Assessee, who also filed written submissions. The learned counsel placed reliance on the Judgement in the case of Hari Vignesh Motors (P) Ltd., cited supra and pointed out that the Revenue had not filed any further Appeal against the said Judgment. The learned counsel stated that for expansion of business which they had been carrying from 1980 they had taken the premises on leave and license basis. learned counsel also advanced an alternate submission that the lease agreements were not registered and consequently, cannot be considered as admissible evidence. It was also stated that the Assessees did not gain enduring benefit and consequently the expenses cannot be treated as capital expenses. The counsel also relied on the case of CIT vs. TVS Lean Logistics

Ltd., reported in (2007) 212 CTR 536 (Mad) wherein, it had been held that expenditure on construction of building on lease hold land and where no building had been taken on lease would not attract Explanation 1 to Section 32(1).

11. The learned counsel also relied on the case of Alembic Chemicals Works Company Ltd., Vs. CIT reported in (1989) 177 ITR 377 (SC) wherein the Hon'ble Supreme Court had held that there cannot be a definite criteria to determine whether a particular outlay is Capital or Revenue. It was stated that the re

test would be to examine whether there is an enduring benefit to the Assessees. The learned counsel stated that the order of the Tribunal has to be upheld.

12. Mr.M.P.Senthil Kumar also advanced a alternate submission that the Assessees have not created any tangible or intangible assets having an enduring advantage by the construction of the further floors in the building and in carrying interior works which were done only to produce the right ambience to attract customers in his textile business. He therefore argued that expenditure incurred in 'repairing' the premises taken on lea would fall within the expression “repairs to the premises” as

provided in Section 30(a)(i). Such expenditure cannot be capitalised as they are temporary in nature. The int decorations could not be durable for a long period of time and would require consistent maintenance and upkeep which also involves costs.

13. The learned counsel stated that the Assessee had submitted the details of cost of construction and expenditure incurred towards interiors. It was stated that the CIT (Appeals) h directed the Assessing Officer to treat the entire expenditure as 'Capital'. The learned counsel therefore pointed out that the issu

may be remanded back to the Assessing Officer to consider the bifurcation of expenditure with respect to cost of the civil construction as well as interiors.

14. We have carefully considered the rival arguments advanced.

15. The primary basis on which the Tribunal had answered the issues in favour of the Assessee was that this Court in Hari Vignesh Motor (P) Ltd., cited supra, following the earlier Judgment of the Hon'ble Supreme Court in Madras Auto Services

(P) Ltd., cited supra had held that expenditure incurred in the nature as incurred by the Assessee herein cannot be considered as Capital expenditure. However, as pointed Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue, Madras Auto Service (P) Ltd., rela Assessment Year 1968-1969. Thereafter, Section 32(1A) had been inserted with effect from 01.04.1970 and this provision had been clarified by Explanation 1 with effect from Consequently, the correct provision which is applicable to these cases are Explanation 1 to Section 32(1) of the Act.

16. It is not in dispute that the Assessees had taken on lease the premises and had put up further additional construction

and had also renovated and incurred expenses for improvement of the building. The contention of Mr.M.P.Senthil Kumar, learned counsel placed only in the written submissions and not advanced during oral arguments that the Court cannot examine the lease agreements since they were not registered has to be rejected because, the lease documents are being examined only to determine a collateral transaction viz., nature of expenditure incurred by Assessee. It is a fact that the Assessee had taken on lease the premises in consideration. They are not the o

They always claimed to be lessees only. Consequently, this submission, raised by way of written submission has to be rejected It had been an admitted stand before the Assessing Officer and before the CIT (Appeals) and before the Tribunal that the Assessee is only a Lessee of the premises in question. This bei which had been settled, cannot be re-examined on the basis of the specious argument advanced.

17. A further examination of the facts of the case shows that the Assessees have actually put up substantial construction o enduring benefit and also renovated the building for the purpose o their business. Explanation 1 to Section 32(1) is as follows:-

"[Explanation 1.- Where the business or profession of the assessee

is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building,

then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

18. This Explanation had been inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act 1986 with effect from 01.04.1988. The Judgement heavily relied on b learned counsel for the Assessees, namely, Madras Auto Services (P) Ltd., cited supra related to the Assessment Year 1968- 1969 before the above provision was brought into effect. Judgement relied on by the learned counsel for the Assessees in Hari Vignesh Motors (P) Ltd., cited supra in the course of the said Judgement did not consider the said Explanation. The other Judgement relied on by the learned counsel in TVS Lean Logistics Ltd., cited supra related to totally distinguishable set facts. In that case, the Assessee had put up construction of a building on a lease hold land. The building was not taken on lease Consequently, it was held as follows:-

"4.1. It is not in dispute that the assessee had put up the impugned

construction of building only on the leasehold land and no building was taken

on lease by the assessee. Therefore, the fiction created by Expln. 1 that the building put up by him in the leasehold land or structure or work shall be construed as if the same is owned by the assessee, is not applicable to the case of the assessee and the Expln. 1 to S.32(1) of the Act is not attracted to the instant case of the assessee at all."

The aforesaid Judgement cited by the learned counsel for the Assessee are therefore not applicable to the facts of the present case in view of amended law.

19. In Silver Screen Enterprises Vs. CIT, 85 ITR 0578, (High Court of P & H), while examining whether expenditure incurred on repairs to chairs, renovation of bu modernisation of cinema house taken on lease by the Assessee, it was held that they are capital expenditure since it brought an enduring benefit. The relevant discussion on this aspect is quoted below:-

"It cannot be denied that the amount spent for the construction of the verandh, office room, side room and bath rooms

brought into existence an asset of an enduring nature. It is no one's case that only the existing verandah, office, side room or bath rooms were repaired. What appears is that these constructions were brought into being for the purpose of modernising the cinema hall. Therefore, the construction of verandah, office, side room, etc., for the purpose of modernising the cinema hall brought into existence are asset of enduring nature in the true sense of the word. The object of the assessee in replacing the old wooden chairs by steel chairs was to attract larger and better customers. This was in fact an outlay for the purpose of earning profits or, in other words for the purpose of better business. It was not an expense which was of a recurring nature, and therefore, it can be safely said that the lessee brought into being an asset of an enduring nature. Undoubtedly, it was an improvement. The wooden chairs were replaced. No evidence had been led to show that the wooden chairs had been useless and could not be used for seating the cinema-goers. On the other hand, the stand taken was that the whole object was to modernise the cinema house to bring it in line with the modern

show business. The replacement was an improvement of an enduring nature and not mere replacement. Capital expense with regard to a short-term venture, such as a lease for a period, had to be viewed in the context of that lease, namely, its purpose coupled with its duration. Expenditure incurred by the assessee is an expenditure of a capital nature and it brought into being an advantage of an enduring nature and thus it had been rightly treated as such by the Tribunal, except to the extent of the amount found by the Tribunal being on account of repairs."

20. In view of the above propositions, we are of the considered view that the expenditure incurred by the Assessee in the present case are Capital in nature and come within the mischief of Explanation 1 to Section 32(1) of the Act. The alterna submission advanced by Mr.M.P.Senthil Kumar that the repairs to the premises cannot be capitalised in view of Section 30(a)(i) of Act is rejected since the renovations made are Capital in nature i the first Assessment Year and only further repairs may attract the provisions under Section 30(a)(i) of the Act. Section 30(a)(i) of Act is as follows:-

> "30. 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."

21. In the present case, the Assesses substantial expenditure towards renovation leading to enduring

benefit. They are not merely repairs. The Assessees incurred expenditures towards improvement and construction of the building. These cannot be termed as 'repairs'. Consequently, this alternate submission is rejected by us. The second alternate submission advanced by Mr.M.P.Senthil Kumar that the case should be remitted back to the Assessing Officer is also rejected since the fact have been addressed and settled by the Authorities

DR.VINEET KOTHARI, J.

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vsg below and it had been concurrently found that the expenditure were capital in nature. The issue of bifurcating the said expenses as capital and revenue would therefore not arise.

22. In view of the above reasons, we hold that the substantial questions of law have to be answered in favour of the Revenue and against the Assessee and the Appeals filed by the Revenue have to be allowed. Accordingly, the Appeals are allowed. No costs.

(V.K., J.) (C.V.

15.04.20

Index : Yes/No
Internet : Yes/No
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