

Supreme Court of India

Cit vs Ramaraju Surgical Cotton Mills on 21 August, 2007

Bench: S Kapadia, B S Reddy

ORDER In C.A. No. 7594 of 2005:

1. This civil appeal is filed by the department against the judgment dated 29-4-2005 in Tax Cases (Ref) Nos. 144, 408, 409 of 1999 and 70 of 2000 etc. in the case of CIT v. Janakiram Mills Ltd.,¹ which also covers the case of the assessee-respondent herein.

2. At the outset it may be stated that vide the judgment dated 10-8-2007, in Civil Appeals Nos. 7604-05, etc. of 2005 in the case of CIT v. Saravana Spinning Mills Pvt. Ltd. this Court has set aside the impugned judgment herein of the Madras High Court in the case of Janakiram Mills Ltd.,¹ principally on the ground that Section 31 and Section 37 of the Income Tax Act, 1961, operate in different spheres and the tests applicable to Section 31 cannot be read into Section 37 of the Income Tax Act.

3. However, we segregated the present Civil Appeal No. 7594 of 2005 from the earlier batch of Civil Appeals Nos. 7604-05 of 2005 as we were told that in the present case the assessee M/s. Ramaraju Surgical Cotton Mills had claimed deduction only under Section 37 of the Income Tax Act.

4. Having heard learned Counsel for the parties we are of the view that in the present case it is not clear as to the ground on which the assessee had claimed deduction under Section 37. Before us it has been urged on behalf of the assessee that expenditure incurred on replacement of assets without increase in the production capacity is revenue in nature. However, there is no such ground taken in the memo of appeal filed by the assessee before the Commissioner.

5. There are a number of tests which are required to be considered while deciding whether the expenditure was revenue or capital in nature. A number of judgments have been cited before us in that regard. However, in the absence of the requisite details regarding the production capacity remaining constant even after replacement, the matter needs to be remitted to the Commissioner (Appeals). There is one more reason why we are inclined to remit the matter. As stated above, the impugned judgment of the Madras High Court in the case of Janakiram Mills Ltd. has been set aside by this Court as there was confusion between the tests to be applied in respect of Section 31 vis-a-vis the test to be applied in the case of Section 37 of the Income Tax Act. Without expressing any opinion on the merits of the case we remit the matter to the Commissioner (Appeals) who will decide the question in accordance with law.

6. Before concluding we may state that according to the department in the present case the assessee was not entitled to claim replacement expenditure as revenue expenditure as it was not incurred to replace an old worn out item of machinery ; that on the contrary the old machine has been replaced by a new machine which constitutes an advantage of an enduring nature and therefore the expenditure was capital in nature. However, according to learned Counsel for the assessee the said test propounded on behalf of the department is no more applicable. We express no opinion on the aforestated contentions at this stage. It is for the Commissioner to decide the aforestated questions

and contentions raised by the department as well as by the assessee. The Commissioner will decide the matter uninfluenced by any observations made in the impugned judgment of the High Court. Liberty to the parties to adduce additional evidences.

7. Accordingly, the impugned judgment of the High Court is set aside and the matter is remitted to the Commissioner (Appeals) who is directed to dispose of the matter in accordance with law.

8. The civil appeal filed by the department is allowed with no order as to costs.

In C. A. Nos. 7593, 7595 and 7600-02 of 2005:

9. For reasons recorded in the case of Ramaraju Surgical Cotton Mills Rajapalayam these civil appeals are also remitted to the Commissioner (Appeals) who is directed to dispose of the matters in accordance with law and as per the directions enumerated in the case of Ramaraju Surgical Cotton Mills (supra).

10. Accordingly, the above civil appeals are allowed with no order as to costs.