

CASE NO.:
Appeal (civil) 4101 of 2003

PETITIONER:
DY.COMMNR.OF INCOME TAX,COCHIN

RESPONDENT:
M/S.S.T.N.TEXTILE LTD.

DATE OF JUDGMENT: 25/10/2005

BENCH:
B.P.SINGH , S.B.SINHA & P.K.BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

This appeal by special leave is directed against the judgement and order of the High Court of Kerala at Ernakulam in I.T.A. 20 of 1999 dated March 14, 2002. By its aforesaid judgment and order dated 11th March, 2002 read with revised order dated 14th March, 2002, impugned herein, out of the two questions referred to the High Court for its opinion, it answered the first question in favour of the revenue, and directed that the second question, together with the question as to whether the claim of deduction of the amount could be claimed under Section 37 of the Act, be considered by the Tribunal. It accordingly, remitted the matter to the Tribunal for fresh disposal of the matter on the aforesaid two questions.

The facts of the case may be briefly noticed :-

The S.T.N. (Respondent herein) is a company running a textile mill. We are concerned with the assessment year 1991-1992. The assessee claimed a deduction of a sum of Rs.11,11,600/- which amount it had incurred for replacement of

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the electric control panel. The Assessing Officer took the view that the said expenditure was in the nature of capital expenditure and therefore, no deduction was allowable under Section 31(1) of the Income Tax Act. It negated the claim of the assessee that the amount was spent on "current repairs" and therefore, covered by Section 31 of the Income Tax Act.

It, therefore, held that the expenditure was a capital expenditure on which only depreciation was allowable and accordingly, allowed depreciation amounting to Rs.2,77,900/- and added back the balance amount of Rs.8,33,700/-.

The assessee went in appeal to the Appellate Commissioner who by his Order of September 20, 1994 allowed the assessee's appeal holding that the expenditure incurred did not represent capital expenditure but was revenue in nature. He, therefore, directed the assessing officer to allow the expenditure incurred as revenue expenditure and withdraw the depreciation allowed.

The matter went in appeal to the Income Tax Appellate Tribunal which, by its order affirmed the findings of the appellate authority. The matter ultimately came up before the High Court at the instance of the revenue and two questions were framed for the opinion of the High Court which are as follows :-

- "1. Whether, on the facts and in the circumstances of the case could the expenditure incurred on replacing the power panel be considered as

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- current repairs entitled to deduction under Section 31 of the Income Tax Act?
2. Whether on the facts and in the circumstances of the case is not the expenditure of Rs.11,11,600/- incurred on replacement of electric control panel a capital expenditure?"

The High Court, by its order of 11th March, 2002 set aside the finding of the Appellate Authority and the Tribunal to the effect that the expenditure was incurred on "current repairs". In view of this finding, the High Court answered the aforesaid question in favour of the revenue. However, the matter was again brought up before the High Court under the heading "to be spoken to" and the attention of the High Court was drawn to certain issues, which according to the assessee arose for its consideration. It was submitted that while answering the second question as to whether the expenditure was capital in nature, the High Court was also required to consider whether the expenditure did not answer the description of any expenditure under Section 37 of the Income Tax Act and could, therefore, be treated as revenue expenditure. The High Court felt that in the facts and circumstances of the case, the question as to whether the expenditure fell within the ambit of Section 37 of the Act may be considered by the Tribunal afresh alongwith the second question referred to the High Court for its opinion. Accordingly, while answering the first question in favour of the revenue, it remitted the second

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question and the additional question, as to whether the expenditure was one contemplated by Section 37 of the Act, for fresh consideration by the Tribunal.

Mr. T.S.Doabia, senior counsel appearing on behalf of the revenue submitted that the High Court having taken the view that the expenditure was not one within the contemplation of Section 31(1) of the Income Tax Act, ought to have, as a consequence, answered the second question in favour of the revenue holding the expenditure to be a capital expenditure. There was no question of considering afresh the question as to whether the expenditure was one contemplated by Section 37 of the Act.

We find that though the High Court, in its earlier order observed that the questions must be answered in favour of the revenue, there is no discussion in the order of the High Court on the second question framed for its opinion. The High Court, perhaps, proceeded on the basis that in view of its answer to the first question, the second question must be answered in the affirmative, i.e. in favour of the revenue.

Having perused Section 37 of the Act, we are of the view that the High Court has not committed any illegality in remitting the matter to the Tribunal. Section 37 of the Act deals with any expenditure not being an expenditure of the nature described under Sections 30 to 36 of the Act, and not being in the nature of capital expenditure or personal expenditure of the assessee, laid down or extended wholly or

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exclusively for the purpose of the business or profession. Such expenses shall be allowed in computing the income chargeable under the head "Profits and Gains of Business". In view of the finding of the High Court it cannot be disputed that the expenditure incurred in replacing the electric panel

is not an expenditure contemplated by Section 31 of the Act as "current repairs". The question as to whether it is in the nature of capital expenditure has not been answered by the High Court. The question therefore, arises whether it is an expenditure of the nature contemplated by Section 37 of the Income Tax Act. The High Court has, in its discretion, remitted both these questions to the Tribunal for fresh consideration.

In the facts and circumstances of the case, we do not find this to be a case in which this Court should interfere with the order of the High Court. Moreover, in view of the paucity of the material before this Court, these questions cannot be answered by this Court in this appeal, and therefore, these questions must be considered afresh by the Tribunal.

We, therefore, find no merit in this appeal and the same is accordingly, dismissed.

We are informed that the matter was remitted to the Tribunal by its order of 14th March, 2002 and so far no order

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has been passed. We expect the Tribunal to take up the matter with most expedition and dispose it of as early as possible.