

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

and

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (Appeal) Nos.1184, 1185 and 2694 of 2006

Commissioner of Income Tax

Chennai. .. Appellant

versus

M/s.AREVA T & D India Limited

New No.457, Anna Salai, Teynampet

Chennai-18. .. Respondent

(Cause title accepted

vide order of Court

dated 02.04.2007

made in

T.C.M.P.Nos.12 to 15 of 2007)

-----

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order of the Income Tax Appellate Tribunal, Bench "A", Chennai dated 29.07.2005 made in I.T.A.Nos.1687/Mds/2000 and 1688/Mds/2000.

-----

For appellant : Mr.M.P.Senthil Kumar

For respondent : Mr.T.Ravikumar  
Standing Counsel for Income Tax

-----

### **JUDGMENT**

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Revenue is on appeal as against the order of the Tribunal relating to the assessment years 1995-96, 1996-97 and 1997-98. As far as Tax Case (Appeal) Nos.1184 and 1185 of 2006 are concerned, the following substantial questions of law are raised:

(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the re-assessment framed under Section 143(3) read with 147 for the assessment year 1994-95 is invalid on the ground that no notice under Section 143(2) was served before framing the assessment?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that expenditure on renting a guest house is allowable as a business expenditure as per Section 37(4)?

(iii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that Lucknow property which was exchanged for another property in respect of which the assessee had forgone the tenancy rights was acquired for a valuable consideration and allowing depreciation under Section 32?

2. As far as the assessment year 1997-98 is concerned, the following substantial question of law is raised:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that Lucknow property which was exchanged for another property in respect of which the assessee had forgone the tenancy rights was acquired for a valuable consideration and allowing depreciation under Section 32?"

3. As far as the first question of law in respect Tax Case (Appeal) Nos.1184 and 1185 of 2006 is concerned, even though the order passed at the time of admission refers to the legality of the order passed under Section 147, by reason of notice under Section 143(2) not being issued, only two substantial questions of law i.e., Questions 2 and 3, arise in T.C.Nos.1184 and 1185 of 2006 survive.

4. As far as the second substantial question of law on the expenditure allowable under Section 37(4) is concerned, both counsel agree that the said question is covered against the assessee by reason of the decision of the Apex Court reported in [2005] 278 ITR 546 (SC) (Britannia Industries Ltd. Vs. CIT). Hence, the first question is answered against the assessee.

5. As far as the third substantial question of law in T.C.(A) Nos. 1184 and 1185 of 2006 and the only substantial question of law in T.C.(A) No.2694 of 2006 regarding the claim of depreciation is concerned, learned counsel appearing for the assessee as well as the learned Standing Counsel appearing for the Revenue pointed out that on the very same issue, this Court has passed an order in T.C.(A) Nos.1390 of 2005, 2436 of 2006 and 250 to 252 of 2008 (Commissioner of Income Tax-I, Chennai Vs. M/s.Alsthom Ltd. (now known as Areva T&D India Ltd.) and held against the assessee. Thus the questions raised were answered in favour of the Revenue. As far as this claim made by the assessee is concerned, learned counsel appearing for the assessee placed before us a copy of the agreement with the landlord M/s.Motor Sales for surrender of tenancy rights and vacating the premises at Lucknow dated 05.09.1990 and the sale deed for the purchase of new premises by the assessee from M/s.Harsaran Singh Constructions Pvt. Ltd. dated 15.05.1991. Referring to the agreement with the landlord dated 5th September 1990, learned counsel pointed out that in respect of purchase of the property by the assessee in consideration of surrender of tenancy rights of the premises at 11, Mahatma Gandhi Marg, Hazratganj, Lucknow by one Motorsales Limited with The English Electric Co. of India Ltd., M/s.Motorsales Limited agreed to pay a sum of Rs.12,20,000/- being the consideration for the surrender of tenancy rights and the said sum was agreed to be paid to the builder towards part purchase price. The sale agreement with the construction company M/s.Harsaran Singh Constructions Pvt. Ltd., was between the assessee and the said construction company and the landlord had nothing to do with the same. Thus, the money paid by the landlord towards the surrender of tenancy rights, instead of it being given to the assessee, was directed to be paid to the Construction company towards the consideration for purchase of property by the assessee; as such, there is no exchange of property. Learned counsel pointed out that the order passed by this Court on 30.03.2012 had not taken note of any of these agreements. Hence, in the light of the materials thus placed before this Court, the assessee be granted the relief of depreciation.

6. We have perused the order passed by this Court dated 30.03.2012 in the Tax Cases filed by the Revenue in T.C.(A) Nos.1390 of 2005, 2436 of 2006 and 250 to 252 of 2008 (Commissioner of Income Tax-I, Chennai Vs. M/s.Alsthom Ltd. (now known as Areva T&D India Ltd.), wherein, this Court pointed out that since there was a payment of consideration in exchange of the property, it could not be held that the assessee would be entitled to the depreciation of the property obtained. Thus this Court reversed the order of the Tribunal.

7. As far as the present case is concerned, we must point out to the agreement with the landlord, which showed the payment of consideration for the surrender of tenancy rights. The Revenue does not dispute the existence of such an agreement. It is also not disputed by the Revenue that the purchase of the premises by the assessee was from M/s.Harsaran Singh Constructions Pvt. Ltd., which had nothing to do with the landlord. Given the fact that tenancy right is a capital asset, as held by the Apex Court in the decision reported in [2005] 273 ITR 1 (SC) (CIT Vs. D.P.Sandhu Bros Chembur P.

Ltd.) that the surrender of tenancy rights amounted to transfer and hence, being a capital receipt, on the facts thus placed before this Court that the amount paid on account of surrender of tenancy rights being given by the assessee to the builder, there is no exchange of one property for the other. Hence, we have no hesitation in accepting the plea of the assessee, thereby rejecting the Revenue's contention raised in all these Tax Cases. Consequently, we hold that the assessee is entitled to depreciation.

8. In the light of the above, the second substantial question of law in T.C.Nos.1184 and 1185 of 2006 relating to expenditure under Section 37(4) and renting of guest house is answered against the assessee and the third substantial question of law in T.C.Nos.1184 and 1185 of 2006 and the only substantial question of law in T.C.(A) No.2694 of 2006 on depreciation under Section 32, is answered against the Revenue.

9. Although learned counsel appearing for the assessee submitted that the name of the assessee has been changed, no petition has so far been filed by the assessee for effecting the name change.

The Tax Cases stand disposed of accordingly. No costs.

ksv

To

1. The Income Tax Appellate Tribunal, Bench 'A', Chennai.
2. The Commissioner of Income Tax (Appeals-IX), Chennai.
3. The Joint Commissioner of Income Tax, Special Range-II,

Chennai 34