

(2002) 10 MAD CK 0173

Madras High Court

Case No: Tax Case No. 47 of 1998 7 October 2002

Commissioner of Income Tax

APPELLANT

Vs

Madurai District Co-operative
Spinning Mills Ltd.

RESPONDENT

Date of Decision: Oct. 7, 2002

Citation: (2003) 131 TAXMAN 513

Hon'ble Judges: R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: Mrs. Pushya Sitharaman, for the Revenue R. Kumar and T.N. Seetharaman, for the Assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

The question referred to us at the instance of the revenue is :

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the assessee is entitled to deduction of the amount representing the employer's contribution to provident fund, family provident fund, even though the payment was not made within the time specified in the second proviso to section 43B read with Explanation below clause (va) of sub-section (1) of section 36?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the expenditure on modernisation of machinery was allowable as deduction, even though the expenditure was incurred in the prior years and the assessee was maintaining the accounts on mercantile basis?

3. Whether the Appellate Tribunal is correct in holding that deduction is allowable as the expenses were amortised, when there is no provision in the Income Tax Act for deduction of amortisation of the expenses, which were actually incurred in the earlier years?"

The assessment year is 1988-89.

2. Counsel for the assessee at the outset submitted that the assessee had huge amount of unabsorbed depreciation and carried over losses and irrespective of the question being answered in favour of the assessee or the revenue, answer to these questions will have no revenue implications. We are not inclined to return the questions only on that ground as the reference had already been made at the instance of the revenue.

3. As regards the first question, this court has held in the case of [Commissioner of Income Tax Vs. Shri Ganapathy Mills Company Limited](#), that the liabilities such as contribution towards Employees' Provident fund and Family Benefit Fund paid within the grace period are eligible for deduction. The Tribunal shall allow the deduction in respect of such of those payments as have been paid within the grace period. The first question is answered accordingly.

4. As regards the modernisation expenditure, expenditure on current repairs and replacement of worn out parts are clearly deductible expenses. The assessee's counsel says that the modernisation expenditure referred to in the question is, in fact, expenditure on such replacement of parts and repairs. Counsel for the assessee submitted that what the assessee had done is in accordance with the instructions given by the Director of Handlooms and the assessee may have an opportunity to place those instructions which had not been placed before the Tribunal and the issue be re-determined by the Tribunal after giving that opportunity to that assessee.

5. Having regard to the fact "that the assessee is a co-operative society which is said to have incurred losses in the past and is a society which operates under the control of the Director of Handlooms, we consider it fit to direct the Tribunal to provide that opportunity which the assessee now seeks.

6. Questions 2 and 3 are, therefore, returned unanswered with the direction to the Tribunal as above.