

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1971/Del/2014  
(Assessment Year: 2009-10)

Norma India Ltd.,  
X-43, Loha Mandi, Naraina,  
New Delhi,  
PAN:AAACN4323J  
(Appellant)

Vs.

ACIT,  
Circle-13(1),  
New Delhi  
(Respondent)

Assessee by :  
Revenue by:  
Date of Hearing  
Date of pronouncement

Sh. Ved Jain, Adv  
Sh. P Dam Kanunjna, Sr. DR  
23/06/2016  
29/06/2016

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is filed by assessee against the order of Commissioner of income tax (Appeals)– XVI New Delhi dated 30/12/2013. In this appeal assessee has raised following two main grounds which are summarized as under:-
  - a. *treating the repairs to building of Rs. 3 158570/- as capital expenditure against claim of the appellant as revenue expenditure*
  - b. *treating the repairs to plant and machinery of Rs. 3 606434/- as capital expenditure against revenue expenditure claimed by the appellant*
2. Brief facts of the case are that assessee is a limited company engaged in the business of manufacturing and export of iron and steel forgings as per the specifications provided by the buyers. For the year assessee filed its return of income on 30th September 2009 declaring total income of Rs. 109299947/-. Ld. assessing officer assessed the total income of the assessee under section 143 (3) of the income tax act at Rs 120046060/-making various disallowances. Out of the disallowances, the first appellate authority deleted some. On the disallowances sustained by the 1<sup>st</sup> appellate authority the assessee is in appeal

before us on two major additions as mentioned in ground No. 2 and 3 of the appeal of the assessee.

3. Ground No. 1 of the appeal is general in nature, which is also not pressed by the assessee, and therefore it is dismissed.
4. Ground No. 2 of the appeal is against disallowance of Rs. 3 158570/- which according to the assessee is revenue in nature and incurred on repairs and maintenance of building which has been held by the lower authorities as capital expenditure. During the year, assessee has claimed expenditure of Rs. 4727116/- as repairs and maintenance of building. On perusal of details of such expenditure, assessing officer came to conclusion that expenditure amounting to Rs. 3158570/- is not of revenue in nature. Before assessing officer, it was submitted that assessee is engaged in the business of forgings and lot of heavy iron hammers are used at a very high temperature. Because of this it results into heavy wear and tear in the building also. However, the Ld. assessing officer came to conclusion that purchase of iron angles and plate are used for the covering or roof and therefore it has given the benefit of enduring nature and hence expenditure is capital in nature. Due to this, he disallowed Rs. 3158570/- holding the same as capital expenditure. On appeal before Ld. CIT (A), assessee gave detailed reasons however, Ld. CIT (A) confirmed the action of the Ld. assessing officer because compared to previous year the expenditure incurred by the assessee in this year are quite significant. Further, he stated that the nature of expenditure such as MS angles and plates could be incurred on items involving building structure. He further held that these items are non-recurring in nature and therefore the above items are having enduring benefit, hence, capital in nature.
5. On appeal before us, the Ld. AR of the assessee submitted that it is not in dispute that the expenditure is incurred by the assessee company. He further stated that merely based on magnitude of expenses incurred in the previous

year in comparison to the current year disallowance could not be made and held that expenditure is capital in nature. He further submitted that looking to the nature of business of the company and this kind of expenditure is required on regular basis to keep the structure in its present condition. He further stated that this kind of expenditure incurred in all types of factories, which are engaged in the kind of activity, and therefore they are not in the nature of exceptional expenditure or unusual expenditure. He submitted that the lower authorities have not appreciated the fact that the assessee has carried out the repair expenditure during the year under consideration and the comparison cannot be made with reference to expenditure incurred in the earlier year. He further relied on the decision of the Hon'ble Delhi High Court in case of CIT versus TS Tech Sun India Ltd dated 03/07/2012. He therefore submitted that the repair expenditure incurred by the assessee is not capital in nature and therefore they should be allowed as revenue expenditure.

6. Ld. DR relied upon the orders of the lower authorities and submitted that as the assessee has incurred substantial expenditure such expenditure looking to the nature of material consumed is definitely capital in nature and assessee has derived benefit of enduring nature. Therefore, he submitted that the disallowance made by the Ld. assessing officer and confirmed by Ld. CIT (A) is correct.
7. We have carefully considered the rival contentions. It is a fact that the assessee has incurred expenditure during the year on MS angles, shapes and sections, plates, iron sheets etc. It is important to note the explanation given by the assessee before the lower authorities. It was submitted that the appellant company's nature of operation of manufacturing activity of forging of iron and steel requires the heating process. It was further submitted that appellant is doing business from the same building for more than 2 decades. No extension of building was carried out by the assessee during the year.

Assessee explained that the forging is the process by which metal is heated and reshaped by plastic formation. The heating process is used at a temperature of 1100°C. Whole process is a continuous process and impacts building structure on a regular basis. Therefore, to keep it in usable condition the assessee needs to incur repairs and maintenance expenditure on regular basis. This kind of expenditure incurred in all types of factories continuously and they are not exceptional in nature they do not result in to enduring benefit. It is also an admitted fact that no new construction has been done by the assessee. The Main reason for the disallowances by the Ld. assessing officer is that the assessee has incurred expenditure on MS plate's sheets and angles. Merely the assessee has used a particular material it cannot be said that the assessee has used it for the purpose of construction of a building without recording a specific finding about the nature of extension or construction work carried out. It is also important to note that detail of expenditure selected by the Ld. AO then saying that it is a capital expenditure in nature without noting that it does not include any cement or labour expenditure. The Ld. assessing officer also did not brought on record that whether the assessee has constructed any new shed. In absence of any finding by the Ld. assessing officer that assessee has extended its already existing building such kind of expenditure cannot be held to be capital in nature. The ratio laid down by the Hon'ble Delhi high court in CIT versus TS TECH SUN India Ltd ITA 35/2012) squarely covered the issue in favour of the assessee wherein on the identical facts and circumstances Hon'ble high court has held that no extra capacity or space was created in the factory by repairing the roof and floor and therefore no advantage of enduring nature was obtained by the assessee. Therefore respectfully following the decision of Hon'ble Delhi high court, we reverse the finding of the lower authorities that the expenditure is capital in nature. In view of this, we hold that the expenditure incurred by the assessee is

revenue in nature and there is no benefit of enduring nature obtained by the assessee. In view of this ground, No. 2 of the appeal of the assessee is allowed.

8. Ground No. 3 of the appeals that assessee has incurred an expenditure of Rs. 3606434/- as repairs to plant and machinery which is held by the Ld. assessing officer as capital expenditure. During the year, assessee has claimed expenditure of Rs. 7368023/- under the head of repairs and maintenance to plant and machinery. During the course of assessment proceedings assessee furnished details of these expenditure out of which Ld. assessing officer has picked up expenditure of Rs. 36060434/- which are pertaining to alloy steel round, miscellaneous assembly items, shapes and sections etc and held that these are capital in nature. Main reason for holding so is that that purchase of shapes and sections are used for the covering and making of roof and it gives the assessee an advantage of enduring benefit and hence it are capital expenditure in nature. Aggrieved by the order of the Ld. assessing officer assessee preferred an appeal before the Ld. CIT (A) who in turn confirmed the finding of Ld. assessing officer. Reason given by the first appellate authority for confirmation of this addition is that the above items are not related to repairs of plant and machinery but related to building and therefore they are capital in nature.
9. Ld. AR submitted before us that the assessee has incurred this expenditure because of repairs and maintenance of plant and machinery for the regular upkeep. He further submitted that this expenditure has neither lead to any addition or increase in the annual production capacity of neither the assessee nor any addition to the existing plant and machinery. He further submitted that this expenditure incurred by assessee has not been disputed by the lower authorities but just because the magnitude and the nature of items shown to have been incurred for the repairs and maintenance it has been disallowed and

held to be capital expenditure in nature. He further relied on the decision of the Hon'ble Delhi high court, as stated in earlier ground. He submitted that in view of the above decision the disallowance made by the lower authorities might be deleted.

10. Ld. DR relied on the orders of the lower authorities and vehemently submitted that the expenditure incurred by the assessee are not in the nature of repairs expenditure but are in the nature of Capital Expenditure and the Assessee has got the Benefit of Enduring Nature.
11. We have carefully considered the rival Contentions and perused the Orders of Lower authorities for making and confirming the disallowance. The Assessee submitted the same reason stating that the manufacturing Process of the assessee is a heating process at the very high degree of temperature and therefore this Kind of Process Causes heavy Wear and tear on the Plant and Machinery, Which requires regular repairs to them. Further No New Capital asset which has been created by the assessee was brought on record by the lower authorities in absence of any such finding that what kind of the new asset the assessee has acquired or constructed in-house merely because the assessee has incurred certain expenditure with which the Ld. assessing officer and the 1<sup>st</sup> appellate authority is not satisfied it cannot be said that they are in the nature of acquisition or construction of the new asset. Similarly in the ratio of decision of Hon'ble Delhi high court in CIT versus T S TECH SUN India Limited (supra) also equally applies to the facts of this case as there is no addition to the capacity of the company or identification of any new plant and machinery constructed/erected by the assessee, the addition/disallowances made by the lower authorities cannot be upheld in view of this we reverse the finding of lower authorities in disallowing the expenditure of Rs. 3606434 on account of repairs and maintenance expenditure on plant and machinery

holding it as capital expenditure. In view of this ground, No. 3 of the appeal of the assessee is allowed.

12. Ground No. 4 is supporting the ground No. 2 and 3 of the appeal. In view of our decision in ground No. 2 and ground No. 3 of the appeal ground No. 4 of the appeal of the assessee does not survive and therefore it is dismissed.
13. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 29/06/2016.**

**-Sd/-**

**(H.S.SIDHU)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 29/06/2016  
*A K Keot*

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR  
ITAT, New Delhi**