

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”, BENCH MUMBAI  
BEFORE SHRI B.R. BASKARAN, AM AND SHRI C.N. PRASAD, JM**

**ITA No.5945/Mum/2014**  
(Assessment Year: 2005-06)

M/s. Hindustan Hardy Spicer Limited Dhanwaty Bldg., Plot No.80, Dr. Annie Besant Road, Worli Mumbai-400 018.	Vs.	Asstt. Commissioner of Income Tax-6(3), Aayakar Bhavan, M.K. Road, Mumbai-400 020.
<b>PAN: AAACX0022G</b>		
<b>Appellant</b>	..	<b>Respondent</b>

<b>Appellant by</b>		<b>Shri Sameer G. Dalal</b>
<b>Respondent by</b>		<b>Shri Satya Pal Kumar</b>

<b>Date of hearing</b>		<b>24-05-2016</b>
<b>Date of pronouncement</b>		<b>31.05.2016</b>

**ORDER**

**PER C.N.PRASAD, JM:**

The present appeal is filed by the Assessee against the order of Commissioner of Income Tax-12, Mumbai dated 01-07-2014 for assessment year 2005-06.

2. The first issue in appeal of the assessee is that the Id. CIT(A) erred in directing the Assessing Officer to re-compute the adjustment of Modvat credit under section 145A of the Income Tax Act,1961. At the outset, Id. Counsel for the assessee submits that regarding valuation of closing stock, the assessee has produced all the details before the CIT(A) and in spite of all those details the CIT(A) directed the AO to value the closing stock and give credit for the same as opening stock. Id. Counsel submits that in principle there is no quarrel as far as the decision of the CIT(A) but

he submits that a direction may be given to the AO to pass appropriate orders as early as possible.

3. With respect to the second issue that is in confirming the disallowance of expenditure incurred to repairs by the assessee treating the same as capital in nature, Id. Counsel submits that assessee has carried out repairs/modification in the existing Nasik factory. He submits that expenditure was incurred by the assessee to preserve its factory building and there was neither any extension, nor increase in the capacity of the building. Therefore, such repairs are only current repairs and should be allowed as revenue expenditure. Before us Id. counsel submitted the nature of expenditure incurred by the assessee by way of certificate dated 30/09/2008 issued by OAK & Associates, Architect and Interior Designer certifying the description of work and nature of work done by them. It is the submission of the Id. Counsel that this certificate is not placed before the lower authorities and it is produced on the directions of the Tribunal, since Hon'ble Bench felt that the nature of work and description of work carried out by the assessee was not specified in the orders passed by AO/CIT(A). On a query from the bench to the Id. DR as to why this issue should not be sent back to the AO for fresh adjudication in view of the fact that description of work and nature of work is to be verified by the Assessing Officer, the Id. DR has not expressed serious objections for sending back the matter to the Assessing Officer.

4. On hearing both the parties, we hold that the direction given by the CIT(A) in respect of valuation of closing stock is in order since the CIT(A) directed the AO to examine the assessee's plea having regard to the directions of the co-ordinate bench of the Tribunal in assessee's own case on earlier occasion, keeping in view the decision of the Bombay High Court in the case of 'Mahalaxmi Glass Works Private Limited' and at the same time it was held that the assessee is duty bound to submit necessary particulars to the Assessing Officer so as to enable him to find out the MODVAT/CENVAT credit component in the opening stock, purchases, sales and closing stock for both the years i.e. A.Y.2005-06 as well as A.Y.2004-05 before the Assessing Officer to recompute the adjustment u/s 145A as per the findings of the Hon'ble Tribunal. Thus, we hold that there is no infirmity in the directions of the CIT(A). However, we direct the AO to pass appropriate orders as expeditiously as possible giving effect to this order.

5. In so far as second issue is concerned that is expenditure incurred towards repairs to factory building, we restore this issue to the file of the assessing Officer who shall consider the description of the work and nature of the work done by the assessee and decide the issue afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

**6. In the result, the appeal of the Assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 31 /05/2016.

Sd/-

**(B.R. BASKARAN)**  
ACCOUNTANT MEMBER

Sd/-

**(C.N. PRASAD)**  
JUDICIAL MEMBER

Mumbai, Dated 31/05/2016

*Ashwini/PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar  
ITAT, MUMBAI