

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA : JUDICIAL MEMBER

ITA no. 3886/Del/2013
Asstt. Yr: 2009-10

Income-tax Officer,
Ward 21(2), New Delhi.

(Appellant)

Vs. Bhat Metals.
F-167, Sector-3,
DSIDC Bhawan, Indl. Area,
Delhi.
PAN: AAACM 3430 B
(Respondent)

Appellant by : Shri S.L. Anuragi Sr. DR
Assessee by : Shri Binod Kumar CA

Date of hearing : 16/02/2016.
Date of order : 13/04/2016.

ORDER

PER S.V. MEHROTRA, A.M:

This is revenue's appeal against the order dated 28.02.2012, passed by the Id. CIT(A)-XXII, New Delhi in appeal no. 307/11-12, relating to A.Y. 2009-10.

2. Brief facts of the case are that during the year under consideration, assessee derived income from job work. It had filed return of income declaring total income at Rs. Nil. The assessment was completed at a total

income of Rs. 59,12,897/- by treating following expenses as capital in nature:

- Furniture & fixtures
- Machine spares
- Repairs & maintenance

3. Ld. CIT(A) allowed the assessee's appeal. Being aggrieved, the assessee is in appeal before us and has taken following grounds of appeal:

1. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.59, 12,897/ - made by the AO by capitalizing expenses on Furniture & Fixtures, machine Spares and Repair & Maintenance, which were claimed as revenue expenses by the assessee.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that capitalization of the expense should have been done by the AO only on the basis of proper material and justification, although Ld. CIT (A) has himself not given any specific finding on the nature of expenses capitalized by the AO.

3. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in that, if these expenses were allowed as revenue expenses by the AO in the order u/s 143(3) for the AY 2008-09, then these should not have been added back in the AY 2009-10 also, ignoring the facts that in the AY 2008-09, the assessee did not-debit any expenses under the head 'Machine Spare.

4. The appellant craves leave to amend or alter all or any of the aforesaid grounds of appeal and amend, alter or add any other ground of appeal.

4. Brief facts apropos the additions made by AO are that assessee had claimed expenses of Rs. 24,72,636/-, Rs. 23,51,189/- and Rs. 19,87,074/- under the head (i) Fixtures (ii) Machinery Spares and (iii) Repair & maintenance of machinery respectively. The AO show caused the assessee as to why these expenses be not capitalized and depreciation allowed thereon. The assessee gave detailed reasons for treating the expenses as revenue in nature, keeping in view the nature of work carried out by it, which are reproduced below:

"The firm is doing vaccum heat treatment for various parties all job work basis, the firm is pionners in the field of vaccum heat treatment, the nature of work consist of three type of heat treatment of die steel and aerospace components such as :

1. Vaccum heat treatment
2. Plasma ION Nitriding
3. Sub Zero Treatment etc.

The process of head treatment is below :-

3. Stress relieving
4. Hardening
5. Tempering almost 3 times
6. Sub Zero on some of the products

Fixtures

The main fixtures required for the above process that is made of Mild Steel (MS), Stainless steel (55) and Graphite. The fixtures are required for loading product in the furnace, type of fixture required as per type of materials which is going to heat treatment into to furnace.

Estimating an accurate expected life of a fixture would be very difficult, since the life of identical fixtures can vary from tool shop to tool shop depending on how they are used, the life of fixtures are depend upon heating/cooling rate, temperature

used, loading condition and atmosphere quality. We have to use multiple fixtures for multiple designs.

In this process we use to go heat upto 1200 degree centigrade in maximum time and for this reason we need stainless steel (55) fixture instead of mild steel (MS) fixtures, if we use mild steel at 1200 degree centigrade it can be melt or bend."

In this process one fixture can be used for maximum 2 to 3 times and useful life of the same is less than a month, hence we have debited the same as revenue expenditure.

Machinery Spares:

Machinery spares in the heat treatment furnace consist of graphite element, graphite road. In an all metal hot zone the heat shield package is made up of multiple layers of sheet metal with space between each layer, the heat shielding often consists of two layers of graphite elements backed by three layers of stainless steel sheet. Requirement of spare parts is felt everywhere there are uses of machinery as fixed assets. Therefore we have debited all the expenses relating to spares of machinery into the revenue account.

Repair and maintenance:

The assessee had installed various type of machinery at the factory, the expenditure of machinery repairs consist of replacement of damage parts of an existing machinery which got damaged in the course of their working, minor repairs and maintenance of machinery is necessary to keep the machinery in working condition and due to this expenditure the assessee has neither acquired a new assets nor the value of exting assets in increased.

We are enclosing herewith some bill given by the parties for repairing work which is ready reference to show that

expenditure is a revenue nature. Hence the assessee has debited repairs expenses in their revenue account.

Graphite Rod, Block and Hot Zone Box

For head shielding in the furnace two layers of graphite elements backed by three layers of stainless steel sheet are required, the use of graphite rod and blocks are one time as once they are heated they can be melt, break or loose so they got unshaped and unusable, we have to change unusable graphite materials on regular basis for smooth running of furnace and maintain quality of products.

We use to purchases block for holding graphite rod and both are used for heating elements and the same is fitted inside the hot zone box, we have to replace hot zone box within 9 to 10 months to maintain proper heat uniformity hence the firm has debited these expenses in their revenue account. "

5. The AO, however, did not accept the assessee's contention, inter alia, observing that assessee's AR himself admitted that estimating an accurate expected life of a fixture would be very difficult. Further assessee is using stainless steel sheets which has a long life as compared to mild steel which has a longer life. The particulars of those fixtures have been given at page 3 of assessment order. He, accordingly, treated the impugned amounts as capital in nature and allowed depreciation thereon.

6. Ld. CIT(A) deleted the addition after considering the assessee's submissions in detail and the nature of activities carried out by assessee under which it could not be said that the impugned expenses resulted into any enduring benefit. He taking into consideration that the furnace was heated up to 1200 degree centigrade, observed that under such circumstances the fixture can be used for maximum 2-3 times only.

7. We have considered the submissions of both the parties and have perused the record of the case. It is well settled law that in deciding the enduring benefit of an expenditure the nature of business carried out by assessee assumes importance. In assessee's case the firm was doing vacuum heat treatment for various parties on job work basis. The nature of work consisted of 3 types of heat treatment of die steel and aerospace components, such as – (i) vacuum heat treatment; (ii) plasma ion nitriding; and (iii) sub zero treatment. From the assessee's submissions, reproduced above, it is evident that heating of items in furnace was done at a temperature up to 1200c and also at sub zero temperature. The Id. CIT(A) has very rightly observed that it is obvious that the items loaded in the furnace can suffer major damage due to the extreme temperature. It was explained before Id. CIT(A) that the fixtures were mostly those items on which the products whose heat treatment were to be carried out were loaded and then both the fixture and the product were put inside the furnace. In such a situation Id. CIT(A) has rightly observed that fixtures would suffer major damage and, therefore, the assessee's claim that they could be used only for 2-3 times, could not be brushed aside. Under such circumstances, merely because assessee had used not only stainless steel, but mild steels and graphite items, could not be a basis for concluding that fixtures would have a very long life, because the life of the item would depend upon the use to which it was put. Ld. CIT(A) has also pointed out that ten items of fixtures listed at page 3 of the assessment order, showed that these were mostly cables, pipes, thermocouple, MCB etc., which did not have any independent existence and would be a part of other machineries. Therefore, merely there being grouped under fixtures, it could not be concluded that they were capital in nature. All these facts noted by Id. CIT(A) have not been

controverted by the department and, therefore, we do not find any reason to interfere with the findings of Id. CIT(A). Accordingly, order of Id. CIT(A) is upheld.

8. In the result, departmental appeal is dismissed.

Order pronouncement in open court on 13/04/2016.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 13/04/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.