

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**ITA No.-1924/Del/2014  
(Assessment Year: 2008-09)**

Voith Paper Fabrics India Ltd. 113-114A, Sector-24, Aberdeen AABCP0441Q	vs	ACIT Circle II Faridabad
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<b>Assessee by</b>	<b>Sh. Santosh K. Agrawal, CA</b>
<b>Revenue by</b>	<b>Sh. Amit Jain, Sr. DR</b>

<b>Date of Hearing</b>	<b>13.11.2017</b>
<b>Date of Pronouncement</b>	<b>14.11.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, J.M.**

Aggrieved by the order dated 16.01.2016 in appeal no. 291/2010-11 relevant to the assessment year 2008-09 passed by the Ld. Commissioner of Income Tax (Appeals)-2, Faridabad (hereinafter for short referred to as the "Ld. CIT(A)"), assessee preferred this appeal challenging the disallowance of shifting expenses of Rs. 30,97,080/-, consultancy expenses of Rs. 12,35,428/- and the addition of Rs. 21,23,877/- on account of increased liability due to exchange fluctuations.

2. Relevant facts are that the assessee is a company deriving income from the business of manufacturing and selling of paper machine, clothing for pulp, paper and board industry. For the AY 2008-09 they have filed their return of income on 27.09.2008 declaring a total income of Rs. 11,84,80,960/- and during scrutiny among other things AO made an addition of Rs. 30,97,080/- by disallowing the expenses claimed as shifting expenses, Rs. 12,35,428/- disallowing the expenses claimed as legal and professional expenses and a sum of Rs. 21,23,877/- on account of foreign exchange fluctuations in respect of liabilities for fixed assets. In appeal Ld. CIT (A) confirmed the same.

3. Though as many as 11 grounds are raised before us, Ld. AR submitted that grounds no. 1 and 8 to 11 are general in nature and do not require any specific adjudication, whereas ground no. 7 is not pressed. He also submitted that grounds no. 4 & 5 are consequential in nature.

4. In respect of ground no. 2 it is the submission of the Ld. AR that the shift of the boiler from one place to another premises was necessary to save heavy capital expenditure and to avoid the

construction of bigger shed and the authorities below erred in holding that the shifting expenses were incurred with a view to expand the business of the assessee, as such, they are capital in nature. According to him by this shift of boiler from one place to another no additional enduring benefit is created to the assessee, as such, the same may be allowed as Revenue expenditure. He placed reliance on the decisions reported in ACIT vs. Praga Tools Ltd., (2013) 23 ITR (Trib.) 622 (Hyd.) for this principle, CIT West Bengal vs. Karanpura Development Co. Ltd. (1983) 144 ITR 538 (Cal.), CIT vs. Madura Coats Ltd. (2002) 253 ITR 62 (Mad.) and CIT vs. Brakes India Ltd. (2007) 161 Taxman 47 (Mad.). Per contra, Ld. DR placed reliance on the orders of the authorities below.

5. We have carefully gone through the record. Nowhere in the assessment order or in the order of the First Appellate Authority, it is stated that by shifting the boiler any additional asset is created. It is only because of the business convenience, stating that in order to save heavy capital expenditure in the shape of construction of a bigger shed, the assessee shifted the existing boiler to a convenient place to promote the operation of the

machinery in a profitable way. It is not the case of the authorities below that the expenditure met by the assessee resulted in bringing into existence any new asset. In the absence of such an event, we find it difficult to return a finding that any enduring benefit resulted to the assessee so as to hold that the shifting was for capital purpose and thereby the expenditure is capital in nature. The decisions relied upon by the assessee are squarely applicable to the facts of the case and facts of all these cases are similar in nature. We, therefore, hold that mere shifting of boiler from one place to another in the case on hand did not result in creation of any additional enduring benefit to the assessee. We, therefore, hold that the expenditure in question is Revenue in nature. We, therefore, allow ground no. 2.

6. Now coming to ground no. 3, authorities below found that the payments made to M/s Nebb Engineering was in connection with up-gradation of finishing machine, as such, they are capital in nature. Ld. AR invited our attention to pages no. 34 & 35 of the Paper Book. At page no. 34 Invoice, it is clearly stated that the payment was for consultancy charges after installation of the

finishing machine and page no. 35 says that the scope of work was professional consultancy for operating and maintaining oil heated cylinder for the period from 01.04.2007 to 31.03.2008 and it was agreed that M/s Nebb Engineering will provide this as post installation consultancy support. These two documents are eloquent on the nature of the payment and the payment was made for the post installation services towards maintaining and smooth running of the finishing machine for a period of one year and the question of deriving any benefit of enduring nature does not arise. The finding of the authorities below that this expenditure is capital in nature cannot be sustained. We, therefore, allow ground no. 3 and direct the AO to treat this expenditure as Revenue expenditure.

7. Adverting to ground no. 6, it relates to the addition of Rs. 21,23,877/- on account of the difference in valuation of closing balance sheet of foreign creditors due to fluctuation in foreign exchange rates, which the assessee claimed as deduction but the AO disallowed the same by invoking provisions u/s 43A of the Income Tax Act, 1961 (for short called as the 'Act'). Ld. CIT (A)

found that the increased liabilities on account of capital assets have to be given effect to in the capital account by making appropriate change in the actual cost of capital asset/capital expenditure, and if this is done there is no case for claiming increased liabilities on capital account because of foreign exchange fluctuations in the profit and loss account. On this premise, the Ld. CIT (A) upheld the action of the AO in invoking the provisions u/s 43A of the Act. This issue is no longer *res integra* and in view of the decision of the Hon'ble Supreme Court Of India in CIT vs. WOODWARD GOVERNOR INDIA (P) LTD., (2009) 312 ITR 0254, increase or decrease in liability for repayment of foreign loan in respect of acquisition of an asset has to be taken into account to modify the figure of actual cost in the year in which the increase or decrease in liability arises on account of fluctuation in the rate of exchange, irrespective of the date of actual payment in foreign currency; amendment of s. 43A by Finance Act, 2002, w.e.f. 1st April, 2003, is amendatory and not clarificatory. Hence, we do not find any reason to interfere with the findings of the Ld. CIT (A) on this aspect and accordingly dismissed this ground of appeal.

Since, grounds no. 4 & 5 are consequential in nature, we do not propose to specifically adjudicate the same.

8. In the result, the appeal of the assessee is allowed in part.

Order pronounced in the open court on 14.11.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 14.11.2017

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI