

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

ITA.No.6450/Del./2014
Assessment Year 2010-2011

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| M/s. Jindal Gas Appliances P. Ltd., RRA Tax India, D-28, South Extension, Part-1, New Delhi – 110 049. PAN AAACJ4027B | vs. | The ACIT, Circle-2, Faridabad. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Rakesh Gupta, Advocate |
| For Revenue : | Shri Amit Jain, Sr.D.R. |

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| Date of Hearing : | 09.11.2017 |
| Date of Pronouncement : | 21.11.2017 |

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A), Faridabad, dated 31st October, 2014, for A.Y. 2010-2011, challenging the addition of Rs.5,16,000.

2. Briefly the facts of the case are that the assessee-company filed return of income of Rs.50,32,110. The assessee-company is engaged in the business of manufacturing of Gas-stove and commercial kitchen equipments. The A.O. noticed from the ledger

account of consumable tools, dies and fixtures that the four bills are dated 2nd March, 2009 of M/s. N.P. Pattern Works relates to previous year of Rs.5,16,000 and thus, were in the nature of prior period expenses. The assessee explained before A.O. expenses relating to consumable tools have no element of prior period expenses. All expenses have been booked on the receipt of bills of the same. All bills pertaining to consumable tools have been raised in the impugned assessment year and therefore, the liability for the expenses has crystalized in this year only. Therefore, there is no question of treating any portion of the expense as prior period. It was also submitted that bills relating to purchase of patterns which have to be tested and examined by the assessee before accepting. These patterns form the basis for the manufacturing of finished products of the assessee and have to be accurate in all parameters to enable the assessee to manufacture high quality components and reduce the risk of rejections. Therefore, the need to examine and test them on all parameters before accepting them. this would take number of days to finish the process of examination. Therefore, it was rightly taken as expenditure in assessment year under appeal. The A.O.

however, did not accept the contention of assessee because bills were raised on 2nd March, 2009 and assessee could have tested the consumable items in a day or so. Since expenditure were not incurred in previous year relevant to assessment year under appeal, therefore, A.O. held that these are prior period expenses and cannot be allowed as deduction under section 37 of the I.T. Act. The A.O. alternatively also held that the bills relate to capital expenditure and as such, disallowed the claim of assessee.

3. The assessee reiterated the same submissions made before the Ld. CIT(A) and submitted that it would take some time to approve patterns. Therefore, these are not prior period expenses. The Ld. CIT(A) confirmed the order of the A.O. as regards the deduction not allowable under section 37 of the I.T. Act. The Ld. CIT(A) however, noted that the explanation of assessee reveal that the very nature of the expenses is not capital. The appeal of assessee was however, dismissed.

4. After considering the rival contentions, we are of the view that the addition is wholly unjustified. The assessee is in the business of manufacturing of Gas-stove parts and commercial

kitchen equipments. The assessee shall have to use consumable tools, dies etc., in manufacturing. According to the explanation of assessee, the patterns are received which are used in the manufacturing/finished products. The accurate parameters of the same shall have to be judged before accepting the same. According to the assessee, it would take some time to complete the process of testing of the patterns. The A.O. without bringing any material on record, simply rejected the contention of assessee by holding that testing could be done within a day or so. The A.O. cannot step into the shoes of the businessman. The A.O. shall have to appreciate the manufacturing process of the assessee from the view of businessman. The Ld. CIT(A), therefore, correctly held that the very nature of the expenses is not capital. There is no challenge by department to the findings of the Ld. CIT(A) to that extent. The bills are of 2nd March, 2009. Therefore, the explanation of assessee is acceptable that bills would have been finalised and crystalised in assessment year under appeal after necessary testing of the patterns so purchased. The contention of the assessee is correct that the consumable tools have no element of prior period expenses because

the same have been used in manufacturing process after testing. Therefore, there was no basis for the A.O. to reject the contention of the assessee. The assessee has incurred the expenditure on crystalizing the bills in assessment year under appeal. Therefore, deduction of the expenditure as revenue expenditure shall have to be allowed in assessment year under appeal.

5. Learned Counsel for the Assessee also referred to PB-46 which is computation of income in preceding assessment year 2009-10 in which year assessee declared total income of Rs.24,74,354 for taxation. According to him, rate of tax was same as in preceding year as well as in assessment year under appeal. Learned Counsel for the Assessee submitted that even if assessee would have made a claim of deduction of the expenditure in earlier A.Y. 2009-10, the tax would remain the same in assessment year under appeal as well as in preceding assessment year. He has therefore, submitted that it would not make any difference for the Revenue. He has therefore, submitted that it is not as if the Revenue has been deprived of any tax. Therefore, deduction is allowable in assessment year under appeal. In support of this contention, he has relied upon the judgments of

the Delhi High Court in the case of CIT vs. Dinesh Kumar Goel (2011) 331 ITR 10 (Del.) and CIT vs. M/s. Vishnu Industrial Gases P. Ltd., ITR.No.229/1988 dated 06th May, 2008 in which on the same proposition, the Hon'ble Delhi High Court confirmed the order of the Tribunal in allowing the expenditure to the assessee by relying upon the decision of the Hon'ble Bombay High Court in the case of CIT vs. Nagri Mills Co. Ltd., 33 ITR 681. Learned Counsel for the Assessee also relied upon the decision of the Punjab & Haryana High Court in the case of CIT vs. Vee Gee Industrial Enterprises dated 28th July, 2015 in ITA.No.187 of 2014 on the same proposition. Considering the issue involved in the above decisions, we are of the view that the facts of the case of the assessee are similar. Therefore, on the basis of the above decisions also, assessee would be entitled for deduction of the expenditure in assessment year under appeal. In view of the above discussion, we set aside the orders of the authorities below and delete the addition of Rs.5,16,000.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 21st November, 2017

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'D' Bench, Delhi |
| 6. | Guard File. |

// By Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.