

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.2703/Mds./2016

निर्धारण वर्ष /Assessment year : 2012-13

M/S.Ramprasad Tubes & Bars P Ltd., Vs. The Deputy Commissioner of
289,Kunnathupudur post, Income Tax,
Kovilpalayam, Corporate Circle -1,
Coimbatore 641 107. Coimbatore-641 018.

[PAN AAACR 9900 P]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. C.A.Venkatesan, C.A
प्रत्यर्थी की ओर से /Respondent by : Mr.S.Sundaresau,ACIT,DR

सुनवाई की तारीख/Date of Hearing : 21-08-2017
घोषणा की तारीख /Date of Pronouncement : 04-09-2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-1, Coimbatore dated 28.06.2016 pertaining to assessment year 2012-13.

2. The first ground raised by assessee is with regard to Ld.CIT(A) /ld.AO treating the expenses in respect of the repairs and maintenance as revenue expenditure instead of the assessee's claim as

capital expenditure in view of the nature of the business activities of the assessee.

3. The facts of the issue are that the AO disallowed a sum of ₹5,08,233/- towards the expenditure said to be incurred for construction of new building in respect of Unit-I and a sum of ₹2 lakhs towards RBTB Unit-III, which is said to be new building. The AO treated these expenditures as capital in nature and the same was disallowed. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A).

3.1 On appeal, the Ld.CIT(A) in para-5(iii) of his order discussed the issue in a cryptic manner and confirmed the addition. Against the order of Ld.CIT(A), now the Assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. The contention of the Id.A.R is that in respect of Unit-I, the expenditure is for the purpose of maintenance of building and it is not at all a new building and in respect of Unit-III, the Id.A.R stated that it is a new construction. However, the facts brought on record do not give any details of nature of expenditure. In our opinion, it is to be examined with reference to the bills and voucher related to this expenditure. Accordingly, this issue is remitted to the file of Ld.CIT(A) to pass a speaking order on this issue and decide in accordance with

law. Hence, we set aside the order of lower authorities and the issue in dispute is remitted to the file of Id. CIT(A) for fresh consideration.

5. The second ground raised by assessee is with regard to software expenditure, the AO /Ld.CIT(A) treating the expenses of ₹1,06,500/- in respect of software development as revenue expenditure instead of the assessee's claim as capital expenditure.

5.1 We have heard both the parties and perused the material on record. Herein also, there is no discussion of nature of software acquired by the assessee whether it is application of software or software relating to operating system. Hence, this issue is remitted back to the file of Ld.CIT(A) to give findings on the nature of software and decide in accordance with law. Accordingly, we set aside the order of lower authorities and the issue in dispute is remitted to the file of Id. CIT(A) for fresh consideration.

6. The third ground raised by assessee is with regard to the AO /Ld.CIT(A) erred in treating the expenses of ₹5,45,000/- in connection with the increase of the authorized capital of the company as capital expenditure.

6.1 We have heard both the parties and perused the material on record. In our opinion, this issue came for consideration before the

Supreme Court in the case of Broke Bond India Ltd. Vs. CIT in 225 ITR 798(SC) wherein held that:-

"It is no doubt true that before the AAC as well as before the Tribunal it was submitted on behalf of the assessee that increase in the capital was to meet the need for working funds for the assessee-company. But the statement of case sent by the Tribunal does not indicate that a finding was recorded to the effect that the expansion of the capital was undertaken by the assessee in order to meet the need for more working funds for the assessee. One, therefore, cannot proceed on the basis that the expansion of the capital was undertaken by the assessee for the purpose of meeting the need for working funds for the assessee to carry on its business. Though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in the profit-making, the expenses incurred in that connection still retain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company. On the facts and in the circumstances of the case, the Tribunal was right in sustaining the disallowance of Rs. 13,99,305 being expenses incurred in connection with the issue of fresh lot of shares."

Accordingly, this ground of appeal raised by the assessee stands dismissed.

7. The fourth ground raised by assessee is that the Id. Assessing Officer ought to have given due weight age to the fact that neither expenses nor income was dealt with relation to the investments made in prior years and is not justified in making an

addition thereon taking into consideration the provisions of the section 14A r.w.Rules 8D.

8. The facts of the issue are that the AO disallowed a sum of ₹6,903/- by invoking section 14A r.w.Rule 8D. At the time of hearing, the Id.A.R stated that the assessee has earned no exempted income. Hence, there cannot be any disallowance. In our opinion, there is a force in the argument of Id.A.R in view of the judgement of jurisdictional High Court in the case of M/s.Chettinadu Logistics in Tax Case No.24 of 2017 vide order dated 13.03.2017. Accordingly, since the investment does not earn any exempted income, there cannot be any applicability of sec.14A r.w. Rule 8D of the Income TaxRules,1962. Accordingly, this ground of the appeal of the assessee in both these appeals is allowed.

5. The last ground raised by assessee is that the cost of patterns is included in the sales of the related deals and hence the cost of patterns is allowable as revenue on the matching principle.

5.1 The facts of the issue are that the lower authorities disallowed a sum of ₹4,17,639/- towards purchase of "Patterns", which are used as Moulds. The contention of the Id.A.R is that it was added to the sale price. As such, there was a reimbursement by customer.

Hence, there cannot be any disallowance for purchase of pattern. In our opinion, this fact is to be verified with reference to the books of accounts of the assessee and accordingly, this issue is remitted back to the file of Ld.CIT(A) and to decide afresh.

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

Order pronounced on 04th September, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 04th September, 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |