

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:- 956/Del/2015  
Assessment Year: 2010-11

DCIT, New Delhi.	Vs.	M/s. Interocean Ocean Shipping India Pvt. Ltd., 552, Bank Colony, Devli Village, New Delhi – 110 062.
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Smt. Gudrun Nehar, Sr. DR
Assessee by :	Shri S.R. Mehra, CA
Date of Hearing	22/02/2018
Date of pronouncement	27/02/2018

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the revenue against impugned order dated 24.11.2014, passed by Ld. CIT (Appeals) -4, New Delhi for the quantum of assessment u/s 143(3) for the assessment year 2010-11. In the grounds of appeal the revenue has raised following grounds:-

1. *“ The Ld. CIT(A) erred in treating the expenditure on furniture and fixture of Rs. 11,26,250/- as revenue expenditure and*

*thereby deleting the addition of Rs. 11,26,250/- made by the AO.*

- 2. On the facts and circumstance of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 60,09,035/- made on account of disallowance of depreciation.*
- 3. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

2. At the outset, Ld. Counsel for the assessee submitted that the grounds of appeal as raised by the revenue are not maintainable and are infructuous. Highlighting the background of the case on such contention, he submitted that here in this case the AO in the assessment order dated 13.8.2012 had made addition, *firstly*, on account of capitalising certain expenditure which was claimed as revenue by the assessee for sums amounting to Rs. 11,26,250/- -; and *secondly*, disallowance of depreciation of Rs. 60,09,035/- on installation of wind mill. Against the said assessment order, the assessee had preferred an appeal before first appellate authority, wherein the Ld. CIT (A) vide order dated 17.5.2013, has deleted both the additions. Against the said the revenue preferred appeal before the Tribunal, wherein the Tribunal vide order dated 17.4.2014 in ITA No. 4715/Del/2013, so far as the issues relating to disallowance of depreciation is concerned, the order of the Ld. CIT (A) allowing the depreciation was upheld. However, so far as the issue of disallowance of Rs. 11,26,250/- on account treatment of repair charges as capital expenditure by the AO, the Tribunal has set aside this issue to the file of the CIT (A) on the ground that AO has not treated sum of Rs.10,13,625/- as capital expenditure but has treated sum of Rs.

11,26,250/- as capital expenditure and after allowing depreciation, he had disallowed the sum of Rs. 10,13,625/-; whereas the Ld. CIT(A) while deleting the disallowance has treated Rs. 10,13,625/- as capital in nature. In pursuance of the direction given by the Tribunal, Ld. CIT (A) has rectified this figure. Thus, ground No.2 has wrongly been taken; and if only ground No. 1 survives, then tax effect of the said disputed amount is much below the monetary limit prescribed by the CBDT for filing of appeal vide circular No. 21/2015 dated 10<sup>th</sup> December, 2015.

3. Ld. DR admitted that ground No. 2 has been inadvertently raised, because this issue already stands decided by the Tribunal in favour of the assessee. So far as the first issue is concerned, he relied upon the order of the AO.

3. After considering the aforesaid facts and submissions made by the parties, we find that so far as ground No. 2 is concerned, that is, with regard to disallowance of depreciation of Rs. 60,09,035/-, the Tribunal has confirmed the order of the Ld. CIT(A) in the following manner:-

*"7. Apropos ground no. 2 brief facts are that assessee had claimed depreciation @ 80% of Rs. 11,01,88,652/-. The AO noticed that assessee had incurred many peripheral expenses for the installation of the wind mill on the heads like erection and commissioning charges and infrastructure development charges. He was of the opinion that 80% depreciation could not be allowed on the expenditure relating to installation of the wind mill. After considering the details, he concluded that depreciation on an amount of Rs. 92,44,670/- is to be allowed under the head of*

*normal plant and machinery @ 15% rather than 80%. He, accordingly, made an addition of Rs. 60,090,35/-. Ld. CIT (A) allowed the assessee's appeal, inter-alia, observing that since the asset in the nature of wind mill would not have come into the operation without incurring these expenses, the same are part and partial of the actual cost of the payment.*

*7.1 We have considered the submissions of both the parties and have perused the record of the case.*

*8. We do not find any reason to interfere with the order of Id. CIT(A) on this issue because, as rightly observed by him, all the expenses incurred upto the stage of final installation of wind mill to make it operational have to be treated as part and partial of actual cost.”*

4. Thus, when in the first round, Tribunal has already decided the issue in favour of the assessee and against the revenue, the same issue now cannot be raked in this proceeding which was only limited to verify the figures of disallowance of capital expenditure. Accordingly, ground No. 2 is dismissed.

5. Now so far as disallowance of Rs. 11,26,250/- on account of capital goods, we find that Ld. CIT(A) in the first round has discussed the issue on merits and has deleted the said addition in principle, however he had erroneously taken the figure of capital expenditure of Rs. 10,13,625/- instead of Rs. 11,26,250/-. The Tribunal has restored this issue to the file of the Ld. CIT (A) to consider this fact. Ld. CIT (A) has now rectified the said mistake in the figures and also decided the issue on merits after observing and holding as under:-

“4. Before me, the Ld. Counsel appeared and filed copy of the order of the ITAT and brought my attention to the fact that while deciding the appeal, I had erroneously considered repair expenses of Rs.10,13,625/- instead of the figures of Rs.11,26,250/- claimed by appellant. It was pleaded that the correct amount may be appreciated in my order.

5. On careful consideration, I find that the Hon'ble ITAT has correctly observed that the Ld. AO had disallowed an amount of Rs.10,13,625/- after treating expenses of Rs.11,26,250/- as capital in nature on which depreciation @ 10% was granted. In the order u/s 250 dated 17.5.2013, while appreciating the facts of the case in para 4, where brief facts were summarized, it was inadvertently mentioned that an amount of Rs.10,13,625/-, was treated as capital expenditure by the AO, while the correct amount was Rs.11,26,250/-. As this mistake is apparent from record, accordingly, I hold that in the para 4 on brief facts, figure of “Rs.10,13,625/-” may be substituted by the figures of Rs.11,26,250/-.

5.2 I find that in para-6 of the order dated 17.5.2013, which is the main para in which decision was given by me on this ground of appeal, no figures whatsoever, have been mentioned and the decision has been given only on the treatment of expenses as revenue, and therefore the typographical mistake in Para 4 would not have had any implication on the merit of the issue, on which I had held that in the appellant's business, changing of fabric of furniture/sofa did not bring in existence any new asset and accordingly, such repairs were held as allowable as ‘current repairs’ u/s 31. In this regard, the decisions cited by the

*appellant, namely; M/s Ballimal Naval Kishore vs. err (1997) 224 ITR 414/90 Taxman 402 (SC), and M/s Sri Mangayarkarsi Mills (P) Ltd. (2009) 315 ITR 114/182 Taxman 141 (SC), were referred to by me. In view of this, as there is no implication of typographical error in para 4 of the order on the crux of decision given in Para 6, therefore, the same decision in para-6 on Ground No.1 is delivered once again. However, as the Hon'ble ITAT has preferred to set aside the appeal on the basis of observation with regard para 4 of the order u/s 250, the mistake crept in the Para 4 is being rectified. Held accordingly. The Ground no. 1 is allowed. The appellant gets full relief.”*

6. The aforesaid finding of the Ld. CIT (A) is based on correct appreciation of facts and law, because the items of repairs and maintenance on account of changing of fabric of furniture / sofa etc. does not bring into existence any new asset but in fact such an expenditure is allowable as current affairs. Accordingly, the order of the Ld. CIT (A) is affirmed.

7. Since we have already decided the issue on merits, we are not deciding the appeal on maintainability of the revenue's appeal on account of tax effect in terms of circular No. 21/2015 dated 10<sup>th</sup> December, 2015, though in these facts and circumstances it is squarely applicable, because now disputed addition in the present appeal is only Rs. 11,26,250/-, on which the tax effect is much below the prescribed limited of Rs.10 lacs. Accordingly, the appeal of the revenue is dismissed.

8. In the result the appeal of the revenue is dismissed.

**Order pronounced in the open court on 27<sup>th</sup> February, 2018.**

**sd/-**

**sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

Dated: 27 /02/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi