

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.971/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Ashta Liners Pvt. Ltd.,  
47, Shivaji Park,  
Kolhapur - 416001

PAN : AACCA2044H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Addl. Commissioner of Income Tax,  
Range - 2, Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 29-05-2018

घोषणा की तारीख / Date of Pronouncement : 31-05-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 10-02-2016 for the assessment year 2010-11.

2. The notice of appeal was sent to the assessee on 18-04-2018 through RPAD at the address given in Form No. 36. The acknowledgment card available on record indicates that the notice was duly served on the assessee on 23-04-2018. Despite service of notice none has appeared on behalf of the assessee. It appears that the assessee is not keen to pursue his appeal. Accordingly, we proceed to decide the appeal with the assistance of Id. DR and on the basis of material available on record.

3. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing of C.I. Castings and Auto Components. The assessee filed its return of income for the assessment year 2010-11 on 15-10-2010 declaring total income of Rs.4,46,00,530/- and deemed income u/s. 115JB of the Income Tax Act, 1961 (hereinafter referred to as "the Act") as Rs.4,72,21,571/-. The case of the assessee was selected for scrutiny under CASS and accordingly, statutory notice u/s. 143(2) of the Act was issued to the assessee on 29-08-2011. In scrutiny assessment proceedings, the Assessing Officer made following additions/disallowances :

- |  |               |
|--|---------------|
| i. Disallowance of machinery maintenance expenses  | Rs.7,55,009/- |
| ii. Disallowance of capital expenditure claimed<br>as Revenue  | Rs.2,69,409/- |
| iii. Disallowance of proportionate interest expenses of<br>work in progress of plant and machinery and<br>factory building | Rs.1,07,581/- |
| iv. Disallowance of miscellaneous expenditure on<br>telephone and car maintenance etc.                                     | Rs.42,121/-   |

Aggrieved by the assessment order dated 20-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order partly accepted the appeal of assessee. The assessee is in second appeal before the Tribunal against the additions/disallowances confirmed by the Commissioner of Income Tax (Appeals).

4. Shri Aseem Sharma representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The ld. DR submitted that the assessee has purchased spares to replace the old worn-out parts. In the case of assessee's sister concern E D Steels Pvt. Ltd., the company has shown sale of discarded spares under the head "Sale of scrap". Whereas, no such income from sale of scrap has been disclosed by the assessee. Since, the activities of the assessee are similar to the sister concern the Commissioner of Income Tax (Appeals) has rightly upheld addition on account of sale of scrap. The ld. DR further submitted that the Assessing Officer made addition on account of sale of scrap by applying the rate of 15.27% of the new material consumed. The Commissioner of Income Tax (Appeals) restricted the same to 10% of the new material. The ld. DR contended that the Commissioner of Income Tax (Appeals) was quite considerate in confirming the addition.

4.1 In respect of ground No. 2 the ld. DR submitted that the assessee has purchased several items as spares for the maintenance and keep up of the machinery. The list of the items purchased is reproduced at page 9, para 4.1 of the assessment order. The Assessing Officer after considering the list of items purchased identified that one of the item mentioned at Sr. No. 10 is a new machinery/equipment and hence disallowed the

expenditure towards the purchase of same as revenue in nature. The Assessing Officer after holding the expenditure on acquiring such machinery/equipment as capital has allowed depreciation and additional depreciation on the same. The Commissioner of Income Tax (Appeals) has upheld the findings of Assessing Officer in the absence of any contrary material.

5. We have heard the submissions made by ld. DR and have perused the orders available on record. The ground Nos. 1 to 3 raised in the appeal are directed against the addition of Rs.4,94,439/- on account of sale of scrap on estimation basis. The authorities below have presumed that on replacement of spares some scrap must have been generated and the assessee must have earned some income from the sale of such scrap. The authorities below have drawn presumption on sale of scrap from the audit accounts of sister concern E D Steels Pvt. Ltd. The authorities below have erred in not considering the submissions of the assessee. The nature of activity carried out by the assessee and E D Steels Pvt. Ltd. are different. The scrap generated in the case of assessee is reused as input by melting the iron scrap for producing cast iron products. We are of considered view that the authorities below have erred in out rightly rejecting the explanation furnished by the assessee. The addition has been made merely on the basis of presumption without properly understanding the nature of activity carried out by the assessee and E D Steels Pvt. Ltd. In our considered view addition made on mere presumptions and surmises without there being any material whatsoever on record is unsustainable. Accordingly, the addition on account of income from sale of scrap is deleted. In the result, the ground Nos. 1 and 2 raised in the appeal is allowed.

6. In ground No. 3, the assessee has raised an alternate plea without prejudice to the ground Nos. 1 and 2, to reduce the addition. Since, the main prayer of the assessee to delete the addition has been allowed, the alternate prayer made by the assessee in ground No. 3 has become infructuous. Accordingly, ground No. 3 is dismissed as infructuous.

7. In ground No. 4 of the appeal the assessee has assailed disallowance of Rs.4,66,286/- as revenue expenditure under machinery maintenance expenses. During the assessment proceedings, the Assessing Officer observed that apart from other items the assessee has purchased following equipment / machinery.

Bill No. Date	Name of Supplier	Description of Machinery	Amount Rs.
34 dt. 14/06/2009	Micro Tech, Tarabai Park, Kkolhapur	(i) Delta make VFD 75 KW VE Series 3 ph, 415 volt, Model – VFD 750 V3C 2 – two nos. and (ii) Delta make breaking Unit for 75 KW VFD, Model VFDB4045	4,14,476/-
		Add : VAT @ 12.5%	51,810
		Total	4,66,286

8. The contention of the assessee before the Commissioner of Income Tax (Appeals) is that the above machinery is used on daily basis for running existing plant and machinery. Hence, the expenditure on acquiring such machinery is revenue in nature. The assessee has not controverted the fact that the above mentioned item is a new machinery / equipment. It is not the case of assessee that the item in question is part of existing machinery or plant which has been replaced with new one. Thus, on the basis of facts culled out from the impugned order, we do not find any merit in ground No. 4 raised in the appeal by the assessee. In any

case the assessee is eligible to claim depreciation on the newly acquired equipment / machinery. The same has already been granted by the authorities below. We do not find any error in the findings of Commissioner of Income Tax (Appeals) in disallowing Rs.4,66,286/- as revenue expenditure and holding the same to be capital in nature. Accordingly, ground No. 4 raised in the appeal is dismissed.

9. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Thursday, the 31<sup>st</sup> day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> May, 2018

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Kolhapur
4. आयकर आयुक्त / The CIT-II, Kolhapur/CIT(Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune