

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.1013/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Kasturi Foundry Pvt. Ltd.,
47, Shivaji Park,
Kolhapur – 416001

PAN : AACCK8802H

.....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 : 31-05-2018

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 19-04-2018 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 the appeal. Accordingly, we proceed to decide the appeal with the assistance of ld. 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.1,24,85,250/- and deemed income u/s. 115JB of the Income Tax Act, 1961 (hereinafter referred to as "the Act") as Rs.3,91,07,646/-. 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 :

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|------|--|---------------|
| i. | Addition on account of discrepancy in closing stock | Rs.87,500/- |
| ii. | Disallowance of Machinery Maintenance Expenses | Rs.5,38,700/- |
| iii. | Disallowance of Capital Expenditure claimed as Revenue Expenditure under the head "Machinery Maintenance Expenses" | Rs.2,19,904/- |
| iv. | Disallowance of various expenditure | Rs.6,139/- |

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 second issue relating to disallowance of Rs.2,19,904/- as revenue expenditure the ld. DR submitted that the assessee has purchased several items as spares for the maintenance and up keep of the machinery. The Assessing Officer after considering the list of items purchased identified that following items were new machinery/equipment and hence disallowed the expenditure towards the purchase of same as revenue in nature.

List of Machinery Maintenance Spares identified as Capital in Nature			
Inv. No.	Inv. Date	Party name	Basic Amount
84	25/09/2009	Dilip Engineering Works	74,250/-
85	02/10/2009	Dilip Engineering Works	74,250/-
FE/116	02/11/2009	Forech Engineers	1,33,800/-
			2,82,300/-

The Assessing Officer after holding the expenditure on acquiring such machinery/equipment as capital has allowed 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 Id. DR and have perused the orders of authorities below. The ground Nos. 1 to 3 raised in the appeal are directed against the addition of Rs.3,52,783/- 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 to support such presumption 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

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.2,19,904/- as revenue expenditure under the head 'Machinery maintenance expenses'. During the assessment proceedings, the Assessing Officer observed that the assessee has claimed Rs.35,27,829/- as Machinery Maintenance Expenses. The Assessing Officer identified that machines/spares purchased to the tune of Rs.2,82,300/- were not in the nature of maintenance and disallowed the claim of assessee as revenue expenditure on such machines/spares.

8. The Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer on the ground that the items identified provide enduring benefit to the assessee. The Hon'ble Bombay High Court in the case of New Sharrock Spinning & Manufacturing Co. Ltd. Vs. Commissioner of Income Tax reported as 30 ITR 338 has held :

"The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, or is its object the obtaining of a new or fresh advantage. This can be the only definition of 'repairs' because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure.

If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which the Legislature has permitted under section 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure."

This view has been reiterated by the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Saravana Spinning Mills P. Ltd. reported as 293 ITR 201.

In the present case there is no finding by the authorities below that the change of spare/part of machinery has increased productivity of machine, or a new asset has come into existence or new advantage is being derived from the machine. Therefore, the contention of the assessee that the expenditure has been incurred for maintenance of existing machinery has to be accepted. Thus, under such circumstance we are of considered view that the addition made by authorities below is not sustainable. Accordingly, ground No. 4 raised in the appeal is allowed.

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

Order pronounced on Thursday, the 31st 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 : 31st 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