

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) Before श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम.बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1918/Kol/2016
Assessment Year: 2012-13

Deputy Commissioner of Income-tax, Circle-10(1), Kolkata.	Vs.	Laboratories Griffon Pvt. Ltd. (PAN: AAACL4591N)
Appellant		Respondent

Date of Hearing	13.08.2018
Date of Pronouncement	07.09.2018
For the Appellant	Shri Sallong Yaden, Addl. CIT, Sr. DR
For the Assessee/Cross Objector	Shri Ravi Tulsian, FCA

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of the Ld. CIT(A)-10, Kolkata dated 07.07.2016 for AY 2012-13.

2. Ground no. 1 of the Revenue is against the action of Ld. CIT(A) in giving partial relief to the assessee on account of foreign tour expenses.

3. Brief facts are that the assessee claimed foreign tour expenses for which the AO asked for details. The assessee replied that in order to increase its export turnover, it was essential to depute the Research Manager of the company to China, Paris, Hongkong, Bangkok etc. The Research Manager was also entrusted to learn and update various technologies and critical areas in manufacturing new formulations and products for the business of the company, which can be advantageous to the assessee company in the long run. Accordingly, she visited various pharmaceutical companies abroad and collected information in order to keep abreast of various techniques and innovative ideas to boost up export of the assessee company. Assessee also brought to the knowledge of the AO that by

this process there is growth in the export turnover from year to year and even though the benefit may not accrue immediately it will gradually yield results and would increase export in the future years. It was brought to the notice of AO that the export turnover for the current financial year has increased to Rs.82,54 lakhs against Rs.11.13 lakhs in the corresponding previous year. It was contended by the assessee that apart from exploring new markets, foreign tour also facilitated the assessee company to procure new sources for purchase of raw materials and advanced machinery suitable for manufacturing pharmaceutical products and formulations. However, the AO was not convinced. According to AO, the tour of Mrs. Zhu Xintian is in no way incurred wholly and exclusively for the purpose of the business of the assessee. According to AO, the past records of the assessee company reveals that Mrs. Zhu Xintian is regularly on tour in the same places abroad and the expenses incurred has been claimed as business expenses by the assessee. According to AO, the assessee has failed to substantiate the business nexus with such kind of tour in last year also. He also observed that no bills for expenses incurred as local conveyance, travelling, boarding, lodging in foreign countries could be produced by the assessee to substantiate the said stay and travelling and that assessee failed to substantiate that these expenses were needed wholly and exclusively for the purpose of the business of the assessee. Hence, the entire claim of the assessee of Rs.17,32,005/- on account of foreign tour was rejected and added back by the AO to the returned income. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who gave partial relief and sustained only 20% of the amount i.e. Rs.2,86,778/-. Aggrieved by the partial relief granted to assessee, revenue is in appeal before us.

4. We have heard both the parties and perused the material available on record. We note that the undisputed facts of the case as recorded above is squarely covered in favour of the assessee by the decision of coordinate bench of this tribunal in assessee's own case for AY 2011-12 vide order dated 11.04.2018 wherein the Tribunal has observed as under:

“9. We have heard rival submissions and gone through the facts and circumstances of the case. We note that assessee deputed its Research Manager Mrs. Zhu Xintian to visit China, Paris & Hongkong/Bangkok with the objective of promoting the export sale of the company and for exploring new source of Raw materials, packing materials, pharmaceuticals manufacturing machines etc. We note from a perusal of paper book page no. 63 which is a chart showing the increase in export turnover in the succeeding years. We note that the

export turnover of Rs.11,13,816/- for the instant AY, increased to Rs.1,33,72,874/- for AY 2014-15. Though gradual, there is certainly increase in export turnover. Invoice copies kept from page 64 to 78 of paper book reveals the import of various pharmaceutical manufacturing machines which are pursuant to the visit of the research scholar and these machineries are required to up-grade the manufacturing machines with advanced technology and compete in the business with others who are engaged in the same kind of business. The Ld. CIT(A) has allowed the travelling expense i.e. air ticket of Rs.3,60,545/-, however, restricted the claim of Rs.6,39,000/- which was claimed to have been expended on account of boarding and lodging. The Ld. CIT(A) taking into account the element of personal expenditure sustained 20% of the disallowance which works out to Rs.1,26,000/- and thus assessee got a relief of Rs.8,64,545/-. Against the action of Ld. CIT(A) only revenue is in appeal. Considering the discussion given above, in the facts and circumstances of the case, we are of the view that Mrs. Zhu Xintian the research manager having visited foreign countries wholly and exclusively for business purposes of the assessee company is entitled to claim the expenditure and we do not want to interfere in the order of the Ld. CIT(A), which is hereby upheld. This ground of revenue appeal is dismissed.”

5. We concur with the finding of fact by the coordinate bench of this Tribunal that Mrs. Zhu Xintian, the research manager having visited foreign countries wholly and exclusively for business purposes of the assessee company and therefore is entitled to claim the expenditure and we do not want to interfere in the order of the Ld. CIT(A), which is hereby upheld. Respectfully following the aforesaid order (supra) of the Tribunal and in the absence of any contrary material brought on record by the Ld. DR at the time of hearing before us, we dismiss this ground of appeal of revenue.

6. Ground no. 2 of revenue's appeal is against the action of Ld. CIT(A) in deleting the disallowance of Rs.6,78,696/- under the head "Publicity Expenses".

7. Brief facts of the issue are that the assessee has claimed Rs.6,78,696/- under the head Publicity Expenses on account of purchase of physician samples from M/s STP Pharmaceuticals Pvt. Ltd, and debited the said expense in the Profit and Loss Account to derive the net Profit from the business. When the AO asked the assessee to furnish the details of such expenses with reason for claiming the same was answered by the assessee that it had purchased Physician Samples from M/s STP Pharmaceuticals Pvt. Ltd., amounting to Rs.6,78,696/- to be supplied free to physicians as Samples. It was brought to the knowledge of AO that distribution and disbursal of Physician Samples is a Marketing Strategy to boost sales of major products and other promotional measures are undertaken for the growth of turnover of particular product. And since the assessee's own factory's

capacity was not good enough, a contract was executed between assessee and M/s. STP Pharmaceuticals Ltd. on a principle to principle basis to produce tablet called "SORBILILE". And since M/s. STP Pharmaceuticals was situated at State of Sikkim, the cost of production was less and by disbursing the sample tablets to the physicians, according to assessee company, the turnover of this product increased manifold. So, assessee tried to justify its claim which was not acceptable to AO. The AO took note of the fact that assessee as 'consignor' has executed a contract with M/s. Franco Indian Pharmaceuticals as 'consignee' for effecting consignment sale with all kind of accountability to effect the sales and for undertaking such responsibility commission of Rs.21,58,321/- has been paid by the assessee to M/s. Franco Indian Pharmaceuticals. So, according to AO, the assessee violated the principal norm of business and claimed expenditure for the business as a manufacturer cum trader (seller) and not as a consignor. Another default the AO noted was that any way the claim of expense of payment of Rs.6,78,696/- to M/s. STP Pharmaceuticals cannot be allowed because it is hit by sec. 40(a)(ia) of the Act for non-deduction of tax u/s. 194C(1) of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to allow it. Aggrieved, the revenue is before us.

8. We have heard both the parties and perused the material available on record. We note that the very same issue cropped up in AY 2011-12 and the undisputed facts of the case as recorded above is thus squarely covered in favour of the assessee by the decision of coordinate bench of this tribunal in assessee's own case for AY 2011-12 vide order dated 11.04.2018 wherein the Tribunal has observed as under:

"12. We have heard both parties and perused the records. We have already noted the gist of the reasons given by AO for not allowing the claim of the assessee, so the same is not repeated for the sake of brevity. We note that the assessee in the capacity as consignor has executed a contract with M/s. Franco Indian Pharmaceuticals on 27.02.2001 (paper book 108-111) as a consignee, for consignment sale with all kind of accountability to effect sales and for undertaking such responsibility commission to the tune of Rs.15,95,355/- was paid by the assessee to it. In order to boost the sales of "Sorbiline", the assessee decided to give physician sample of this product. Realising that its factory did not had the capacity to produce the physician sample and for water shortage in its plant, the assessee got into an agreement with M/s. STP Pharmaceuticals on 22.02.2010 (PB page 80-88) to manufacture "Sorbiline" and sell the same to the assessee on "Principal to Principal" basis. We note from a perusal of invoice that M/s. STP suffered central sales tax (PB Page 91-106) for the product manufactured by it. The assessee took into consideration the advantage of the unit of M/s. STP which was located at Sikkim and cost of production of physician sample was comparatively very less and there was no scarcity of water. The decision to disburse

physician sample was to boost the sale of "Sorbiline" in the market and it gave results. We note that total sales of "Sorbiline" comes to Rs.13,65,19,553/- whereas the expenditure incurred on physicians samples amount to Rs.5,81,77,566/- which represents 4.3% only towards promotional measures and assessee has justified its claim for the expenditure incurred which was wholly and exclusively for business purposes and thus qualifies for business expenditure, which has been rightly allowed by the Ld. CIT(A). Coming to the other reason of AO to disallow the claim of expenditure for non-deduction of TDS u/s. 194C of the Act for the payment made by assessee to M/s. STP, we first of all reproduce sec. 194C of the Act

"Sec. 194C(1)- Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to-

(i) one per cent. where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent. where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

.....

Explanation -- For the purposes of this section,-

(iv) "work" shall include-

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting,

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from a person, other than such customer."

13. Sec.194C of the Act stipulates that when the assessee in pursuance of a contract between the assessee and the contractor carry out any work through a contractor (including supply of labour for carrying out any work), makes the payment to the contractor shall deduct tax at source as specified in the section. Definition of work for the purpose of this section is important to ascertain the legislative intent.

14. As per clause (e) of Explanation (iv) of sec. 194C of the Act, itself excludes manufacture or supply of a product according to the requirement or specification of a customer (assessee) by using material which is purchased from a person other than such customer (assessee), from the ambit of section 194C.

15. We note that clause (e) as introduced contains a positive affirmation that the expression "work" will cover manufacturing or supplying a product, according to the requirement or specification of a customer, by using material purchased from such a customer. Clause (e) has placed the position beyond doubt by incorporating language to the effect that the expression "work" shall not include manufacture or supply of a product according to the requirement or specification of a customer by using material which is purchased from a person other than such customer. Meaning thereby, when the material is purchased from the customer who orders the product it constitutes a contract of work, resultantly section 194C will be attracted, while on the other hand, where the manufacturer has sourced the material from a person other than the customer, it would not be classified as work, resultantly section 194C would not be attracted in the later case. So to adjudicate this issue let us look into the relevant clauses of the agreement between assessee and M/s STP regard, the relevant extracts of the said agreement dated 22.02.2010 (page nos. 80-88 of the paper-book)are reproduced as under:

"And whereas on the faith and strength of the above representation and warranties made and given by STP, LG has agreed to enter into this Agreement for STP to manufacture and sell the same to LG on "Principal to Principal" basis, or to any other party who is authorized by LG from time to time upon and subject to the terms and conditions hereinafter contained.

.....

14) Nothing in this Agreement shall constitute or be deemed to constitute STP as the Agent of LG as it being agreed and understood that this Agreement is on a "Principal-to-Principal" basis."

16. From perusal of the above, it is evident that the agreement was entered into by the assessee on principal to principal basis and was not a contract for carrying out any work since M/s.STP Pharmaceuticals Pvt. Ltd has for the production of SORBILINE sourced the material from a person other than the assessee. We also note from perusal of page 14 PB that assessee's domestic total sales was to the tune of only Rs 20,92,31,782/ when compared to the expenditure for the production of SORBILINE from M/s.STP Pharmaceuticals Pvt. Ltd to the tune of Rs 58,77,566/ which they manufactured by sourcing the material from a person other than the assessee, doesn't fall in the ken of sec 194C of the Act.

17. In the instant case, we note that Ld. CIT(A) on this issue has made a factual finding. We note that due to restriction of production of liquids in the factory premises by the land lord of the assessee, due to effluent water problem, the production of SORBILINE was shifted to backward area as ancillary costs for manufacturing the said product are low. In this regard, the assessee entered into an agreement with M/s.STP Pharmaceuticals Pvt. Ltd. according to which M/s. STP will manufacture the pharmaceutical products in the brand name "Sorbiline" by using materials from its own source and sell the same to the assessee on "principal to principal" basis. Therefore, undoubtedly the provisions of clause (e) of Explanation (iv) of sec. 194C gets attracted in the instant case and as such, the entire expenditure of Rs.58,77,566/- being paid to M/s.STP Pharmaceuticals Pvt. Ltd for purchase of "Sorbiline" does not come under the ambit of sec. 194C, therefore, the AO erred on this issue, which has been rightly corrected by the Ld. CIT(A), which calls for no interference, so we confirm the order of Ld. CIT(A)."

9. Since there is no change in facts & law and the Ld. DR could not point out any change in law & fact and in the absence of any contrary material brought on record by

the Ld. DR at the time of hearing before us, respectfully following the aforesaid order (supra) of the Tribunal and, we dismiss this ground of appeal of revenue.

10. Ground no. 3 of revenue's appeal is against the action of Ld. CIT(A) in allowing the repairing expenses incurred on factory building.

11. Brief facts are that during the relevant financial year, the assessee company undertook repairs and maintenance work in the factory premises located at Haji Moosa Parawala Industrial Estate, 20, Dr. E Moses Road, near famous Mahalaxmi, Mumbai - 400011. It is also a fact that the factory premises of the assessee were taken on lease for thirteen years from (i) Usman Gani Moosa Patrawala & Nine others and (ii) Moosa Haji Patrawala & Three others, vide agreement dated 30/12/2005, which was to expire on 31/03/2017. During the course of the assessment, the AO, having observed as above, held that out of above expenditure incurred, civil works done by Kayath Enterprise for Rs.1,73,26,852/-, Carpentry & Upholstery Works done by Davar contracts for Rs.36,88,367/- and Electrical works done by Meher Electrical Works for Rs.18,24,235/-, was of permanent nature and therefore, the same represents capital expenditure and therefore not allowable expenditure. For coming to that conclusion AO relied on the decision of the Hon'ble Allahabad High Court in the case of CIT vs. NOIDA TOLL BRIDGE CO LTD. reported in (2013) 213 TAXMAN 0333. Having held the aforesaid expenses as capital in nature, the AO disallowed the expenditure, however, allowed depreciation @ 10% and taking note that the entire work was executed after 30/09/2011, the said depreciation was restricted @ 5% on the total amount of Rs.2,28,39,454/- [Rs.1,73,26,852 + Rs.36,88,367 +Rs.18,24,235]. Thus, disallowance under the head factory building repairing expenses was determined at Rs.2,16,97,481/- [Rs.2,28,39,454 - 5% of 2,28,39,454]. On appeal, the Ld.CIT(A) granted full relief to the assessee and held the expenditure to be revenue in nature since it was incurred to facilitate the assessee's business operations. Aggrieved, the revenue is before us.

12. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee company has entered into lease agreement with

(i) Usman Gani Moosa Patrawala & Nine others and (ii) Moosa Haji Patrawala & Three others on 30/12/2005 in respect of property located at Haji Moosa Parawala Industrial Estate, 20, Dr. E Moses Road, Mumbai - 400011. We note that the Lease Agreements were entered for a period of thirteen years which would expire on 31/03/2017. We note that the said lease hold property is used as factory premises of the assessee company. During the relevant financial year, the factory premises of the assessee underwent complete renovation and it was contended by the Ld. AR that such repair work was undertaken by the assessee as per the terms of the lease agreement. For that our attention was drawn to clause (j) of the lease agreement dated 30/12/2005, in respect of 2nd floor of the said property, (pg 80 of the P/b), relevant portions of which are reproduced as under:

“(j) Lessees shall be entitled to make such additions and alterations that may be necessary for the business of the Lessees or which the Lessees are required to make to comply with rules, regulations and requirements of the concerned authorities for the business of the Lessees. Lessees shall be entitled to bring in new or second hand machinery, equipments, furniture, utilities or any other material required for business including materials for repairs and to carry out internal wooden partition or aluminum or dwarf siporex partition work without permission from the Lessors.....”

13. We note that the repairs to factory premises comprised of civil work, carpentry and upholstery, electrical works, fabrication works, painting works etc. and the details of such expenditure are enclosed at page no. 38 of the Paper book. According to Ld. AR, this repair work was undertaken with the intention of facilitating the assessee's trading operations thereby enabling the management to conduct the business of the assessee more efficiently.

14. We note that expenses incurred in respect to civil work is as follows: black marble window frame, tick wood panel door with frame & fittings, black marking marble flooring and dado, polymer cementation of RCC-water tanks, external and internal two coats of sand based plaster, providing and fixing of black granites, frame of window and doors, providing & fixing of S.S. railings with 12mm glass, providing and fitting of sanitary ware, plumbing accessories etc., Expenses incurred in respect to carpentry & upholstery works is as follows : providing and applying new plaster of paris and gypsum stucco plaster on the walls and plain putty etc., Expenses incurred in

respect to Electrical Works is as follows: removal of existing cables, supply & installation of PVC conduit, supply and installation of Deta Flex Distribution System etc. Apart from this, we note that the assessee also incurred expenditure on fabrication, painting and other miscellaneous works. The claim of the assessee that these expenditure are revenue in nature and need to be allowed was turned down by the AO on the reasoning that these expenditure are of capital in nature and so he allowed depreciation on the expenditure claimed. However, the Ld. CIT(A) allowed the claim of the assessee. Therefore, the main issue involved in this case is whether the aforementioned expenditure incurred on the leased premises is to be treated as revenue expenditure or capital expenditure while computing the total income. In this regard, it would be of relevant to quote the relevant provisions of Sec.30 of the Act, which reads as under:

"Sec.30: In respect of rent, rates, taxes, repairs and insurance for premises, used for the purpose of the business or profession, the following deductions shall be allowed:

a) Where the premises are occupied by the assessee -

i) as a tenant, the rent paid for such premises, and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

b) any sums paid on account of land revenue, local rates or municipal taxes,'

c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises;

Explanation: For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub clause (i), and the amount paid on account of current repairs referred to in sub clause (ii) of clause (a), shall not include any expenditure in the nature of capital expenditure. "

15. In view of the foregoing provision, it is clear that whenever the assessee incurred expenditure for repairing the premises taken on lease it has to be allowed u/s 30(a)(i) of the Act. However, where the amount is incurred by the assessee otherwise than as a tenant in respect of 'current repairs' has to be allowed u/s. 30(a)(ii) of the Act. Therefore, it is very clear that whenever the assessee incurred expenditure for repair and maintenance of a building taken on lease for carrying on its business activity, it has to be allowed u/s. 30(a)(i) provided the same does not fall in the capital

field. In case, the expenditure was in the capital field then such an assessee is entitled for depreciation either u/s. 32(1A) or under Explanation 1 to Sec.32 w.e.f. 1.4.1971. We note that before 1.4.1971, the capital expenditure incurred by the assessee had to be totally disallowed and such assessee was not eligible to claim even depreciation. The aforesaid view of ours has been upheld by the Hon'ble Delhi High Court in the case of CIT Vs. Hi Line Pens (P) Ltd. reported in 306 ITR 182. In this case, the assessee has claimed expenditure u/s.30(a)(i) of the Act, in respect of amount incurred on the leased premises. The assessee incurred expenditure towards false ceiling, fixing tiles, replacing glasses, woodworks partition, replacement of electrical wiring, earthing, replacement of GI pipes etc. The Hon'ble Delhi High Court after considering its earlier judgement in Instalment Supply (P) Ltd. and judgement of the Apex Court in CIT Vs. Saravana Spinning Mills P. Ltd 293 ITR 201 and in the case of Ballimal Naval Kishore Vs. CIT 224 ITR 414 found that the assessee's claim has to be allowed u/s. 30(a) (i). The observations of the Hon'ble High Court are reproduced hereunder:

"After having considered the arguments advanced by learned counsel for the parties and examined the decisions cited by them, we are of the view that the assessee's claim for deduction u/s 30(a)(i) has been rightly allowed by the Tribunal. The decisions cited by the learned counsel for the Revenue relate to 'current repairs'. There is a clear distinction between the expression 'repairs' and expression 'current repairs'. It is obvious that the word 'repairs' is much wider than the expression 'current repairs'. This fact has also been taken note of the Supreme Court in the case of 'Saravana Spinning Mills (P) Ltd. (2007) 293 ITR 201. The expression 'current repairs' is much more restricted than the word 'repairs' because the latter is qualified by the word 'current'. What the assessee has done in the present case has been construed to be repairs by the Tribunal as a finding of fact. It has not brought about any new asset and more importantly it was not the intention of the assessee to bring about any new capital asset. The expenses that were incurred by the assessee were towards repairing the premises taken on lease so as to make it more conducive to its business activity. Such expenses would clearly fall within the expression of repairs to the premises as appearing in section 30(a)(i). The Legislature has made a distinction between expenses incurred by a tenant for 'repairs' of the premises and expenses incurred by a person who is not a tenant towards 'current repairs' to the premises. The distinction has to be given meaning. Perhaps the logic behind the distinction was that a tenant would, by the very nature of his status as a tenant, not undertake expenditure as would endure beyond his likely period of tenancy or create a new asset. Whereas, an owner may undertake expenditures so as to even bring about new assets of capital nature. It was, therefore necessary to qualify the expenditure on repairs. The deduction was, therefore, limited to expenditure on 'current repairs' only. It follows, therefore, that the cost of repairs that have been incurred by books of account tenant in respect of such premises would have to be allowed u/s 30(a) (i). The question of disallowing such expenditure and relegating the assessee to claim depreciation u/s 32 does not arise. The assessee has not claimed depreciation. It has claimed deduction under section 30(a) (i). Once the assessee's claim falls within that provision there is no question of considering the question of

applicability of section 32. Consequently, the question that has been framed is answered in favour of the assessee and against the Revenue. The appeal is dismissed."

16. Before us the Ld. AR cited the following case laws:

- i) Delhi Tribunal in the case of P.S.B. Vs. Inspecting Assistant Commissioner reported in 35 ITD 9 (TM) (Delhi),
- ii) Instalment Supply P. Ltd. Vs. CIT (1984) 149 ITR 52 (Del.),
- iii) CIT Vs. Kalyanji Mavji & Co. (1980) 122 ITR 49 (SC)

17. Taking note of the decisions as relied on above, we note that the assessee has taken on lease the factory premises situated at Haji Moosa Parawala Industrial Estate, 20, Dr. E Moses Road, Mumbai - 400011. The lease agreement was entered for a period of thirteen years and was to expire on 31/03/2017. For the purpose of carrying out its business effectively and efficiently, the assessee incurred expenditure for repairing the factory premises. Such repair work was undertaken by the assessee as per the terms of the lease agreement [pg 80 of the Paper book]. After the expiry of the period of lease, the lessee has to vacate the premises by leaving the repairs, etc., along with fixture and fitting to the lessor. The assessee is thus neither the owner of the building nor of the fittings or fixtures, because all of them have to revert to the lessor after the expiry of the term of the lease. We thus note that the expenditure incurred in this connection has not brought into existence any new advantage or any new asset and the expenditure was incurred only in the process of earning profit in the course of its business activities. Even after incurring expenditure on repair, the assessee continued to be lessee of the factory premise and continued to carry on the same business. Therefore, the business of the assessee remained the same even after the expenditure and the asset continued to be one of the lease holding assets. Hence, the claim of the assessee has to be allowed u/s 30(a) (i) of the Act. From a perusal of the details of expenditure incurred on repairs, we note that the assessee had incurred the expenditure so that its factory premises meet the international standard which was required for making export of its pharmaceutical products. When we take each expenditure into consideration like expenses incurred on account of civil work comprised of changing of window frames and changing of door panel to teak wood panel door together with

new frame & fittings. We note that the old cement flooring was changed to marble flooring and for improving water hygiene, polymer cementation of RCC- water tanks was done. Moreover, plaster works were done by providing external and internal two coats of sand based plaster since the condition of the building which was quite old required maintenance. In this connection, we note that sanitary ware fittings and plumbing accessories were also changed. Similarly, we note that expenses incurred on account of carpentry & upholstery works comprised of applying new plaster of paris on the walls and doing putty work. Expenses incurred on account of electrical works comprised of removal of existing cables, supply & installation of PVC conduit, supply and installation of Deta Flex Distribution System etc which were essential to meet the international standard for production of pharmaceutical products. Thus, we note that the expenses incurred were not of capital in nature and was revenue in nature. Moreover, we note that the assessee has not obtained any new enduring benefit. We note that no capital asset came into existence. The assessee continued its business in the very same factory premises with the only exception that after renovation, the assessee's factory premises met the international standard required for production of its pharmaceutical products. Therefore, we are of the view that the expenditure incurred by the assessee was an integral part of profit earning process. As such, the claim of expenditure on repairs is to be allowed as revenue expenditure. Reliance in this connection is placed on the decision of the Apex Court in the case of COMMISSIONER OF INCOME-TAX v. MADRAS AUTO SERVICE (P.) LTD. [SC] 233 ITR 468: In this case, the assessee was a company carrying on the business of sale of motor parts. Its head office was at Madras. It had a branch at Bangalore. Under an agreement of lease the assessee obtained certain premises for a period of thirty nine years at Bangalore. Under the terms and conditions of the lease, the lessee (that is to say the assessee), had the right to demolish at it own expense the existing premises and appropriate to itself all the material, thereof, without paying to the lessors any compensation and construct a new building thereon to suit the purpose of their business as per the plan approved by the lessors. Under clause 2 of the lease deed, the lessee was required to pay a rent of Rs. 1,000 per month for the first fifteen years, Rs.1,500 per month for the next ten years, Rs. 1,650 per month for the next ten years

and Rs. 2,000 per month for the remaining years. The lease deed further provided that the new construction shall, right from the commencement of the work, be the property of the lessors; and upon completion of the work of construction the lessee would have only the right to be a tenant for period of 39 years under the existing lease, subject to the payment of rent and observation of other terms and conditions of the lease. The lessee would not be entitled under any circumstances to an compensation whatsoever on account of its putting up the new construction in place of the old. Acting under the lease agreement, the assessee invested a sum of Rs. 1,62,835 in the previous year relevant to the assessment year 1968-69 and Rs. 50,937 during the succeeding year in constructing a new building on the said land. The assessee claimed before the Income-tax Officer the expenditure of the said sums of Rs.1,62,835 and Rs. 50,937 in the relevant assessment years as capital loss. In the alternative, the assessee claimed deduction of the payments as business expenditure or as extra rent for the lease. The Tribunal held that the expenditure of the said two amounts for the construction of a new building was in the nature of business expenditure for proper carrying on of the business of the assessee. The Tribunal had, therefore, treated these amounts as revenue expenditure. This view of Tribunal was upheld by the High Court. On appeal to the Supreme Court, the Hon'ble Apex Court held, dismissing the appeal:

"that right from inception, the building was of the ownership of the lessor. Therefore, by spending this money, the assessee did not acquire any capital asset. The only advantage which the assessee derived by spending the money was that it got the lease of a new building at a low rent. From the business point of view, therefore, the assessee got the benefit of reduced rent. The High Court had, therefore, rightly considered this as obtaining a business advantage. The expenditure was, therefore, to be treated as revenue expenditure. "

18. In the case of L. H. Sugar Factory and Oils Mills (P.) Ltd. v. CIT reported in [1980] 125 ITR 293 (SC) the Hon'ble Apex Court held:

"..... although the advantage secured was of long duration, it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee; nor was there any addition to or expansion of the profit-making apparatus of the assessee. The amount was contributed for the purpose of facilitating the business of the assessee and making it more efficient and profitable. It was, therefore, revenue expenditure."

19. In CIT v. Associated Cement Companies Ltd. reported in [1988] 172 ITR 257 (SC), the respondent-company entered into an agreement to supply water to the municipality and provide water pipelines as also to supply electricity for street lighting and put up a transmission line for that purpose. The assessee also agreed to concrete the main road from the factory to the railway station. The amounts expended for these purposes were held to be revenue expenditure since the installations and accessories were the assets of the municipality and not of the assessee. The expenditure, therefore, did not result in creating any capital asset for the company. The advantage secured by the respondent was immunity from liability to pay municipal rates and taxes for a period of 15 years. This court said that had these liabilities been paid, the payments would have been on revenue account. Therefore, the advantage secured was in the field of revenue and not capital.

20. Thus, in view of the above judicial precedents we are of the view that when the nature of work undertaken by the assessee is to carry on the business and not to obtain any capital asset, the expenditure incurred in this connection is to be treated as revenue expenditure. And it should be kept in mind that even though the advantage that accrues to the assessee on the incurring of the expenditure may endure for an "indefinite future," still since the advantage consisted merely in facilitating the assessee's business to be carried on more efficiently or profitably while leaving the fixed capital untouched, the advantage would be of revenue nature. Therefore in the facts and circumstance of the case and in the light of the judicial precedents as discussed above, we are inclined to confirm the order of Id CIT(A) and dismiss this ground of appeal of revenue.

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

Order is pronounced in the open court on 07/09/2018

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 7th September, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – DCIT, Circle-10(1), Kolkata.
- 2 Respondent – M/s. Laboratories Griffon Pvt. Ltd., 40/B, Princep Street, Kolkata-700 072.
- 3 CIT(A)-10, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary