

आयकरअपीलीयअधिकरण, सुरतन्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

श्रीसी.एम.गर्ग, न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 2109/Ahd/2014/SRT	निर्धारणवर्ष/A.Y.:2010-11
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DCIT, Circle-1, Surat.	Vs.	M/s. Colourtex Industries Ltd, Plot No.80, GIDC Pandésara, Surat PAN : AABCP6359B
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Ankur Shah, C.A.
राजस्वकीओरसे /Revenue by	Shri J. K. Chandnani, Sr. D.R.

सुनवाईकीतारीख/ Date of hearing:	22.06.2018
उद्घोषणाकीतारीख/Pronouncement on	27.06.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

This appeal has been filed by the revenue against the order of Commissioner of Income-tax (Appeals)-I, Surat (in short 'the CIT(A)') dated 05.03.2014 for the Assessment Year 2010-11.

2. Ground No.1 to 3 states that the learned Commissioner of Income-tax (A) are deleting that the addition made by the A.O. of

Rs.49,93,929/- on account of treating the revenue expenditure as capital expenditure.

3. Brief facts are that the assessee has carried out upgradation of high voltage supply of electricity from the existing load of 950 KVA to 2000 KVA from Dakshin Gujarat Vij Company Ltd. (DGVCL). It has paid service station charges and service connection charges of Rs.41,01,429/- and Pro Rata charges of Rs.8,92,500/- to DGVCL for the supply of additional 1050 KVA of High Tension (HT) power. The A.O. disallowed Rs.49,93,929/- by treating the same as capital expenditure on the ground that it is not recurring in nature unlike the electricity expenses on the consumption of electric power for which monthwise billing is done by DGVCL. However, the learned CIT(A) allowed the appeal of the assessee by holding that incurring the said expenditure did not acquire any right on those service line etc. and those line were under the control of DGVCL which is free to use the same for distributing power to other customers. It was further held that the expenditure incurred by the assessee during the course of year under consideration which is an on going concern and is an allowable expenditure as revenue expenditure. The CIT(A) has supported his decision by placing reliance in the case of (i) Mahindra & Mahindra vs. JCIT [2010] 36 SOT 348, (ii) CIT vs Makhan Sarmahh Savapandit (1989)

180 ITR 35 (GAU), (iii) CIT Vs Vanaja Textiles Ltd. (1994) 208 ITR 161 (Ker) , (iv) ITO Vs AIMS Oxygen (P) Ltd. (1983) 16TTJ(Ahd)360.

4. Being aggrieved, the Revenue has filed this appeal before the Tribunal. It was contended by the Sr. D.R. that expenditure incurred for increase of ST power supply and being of one time payment made to DGVCL. It is not recurring in nature, unlike the electricity expenses on the consumption of electric power for which monthwise billing is done. Therefore, expenditure has brought enduring advantage to the assessee and expenditure enhance the high-tech power supply for production resulting into greater productivity. Therefore, expenditure so incurred is of capital in nature.

5. On the other hand, the learned counsel for the assessee placing reliance in the case of Mahindra & Mahindra vs. Jt.CIT (2010)36 SOT 348 contended that non refundable consumer contribution/ service charges paid by the assessee to MSEB on account of availing additional power is on commercial consideration, which is in the nature of revenue expenditure and hence allowable. The learned counsel further placed reliance in the case of CIT Vs. Makhan Sarmah Savapandit (1989) 180 ITR 35 (GAU) wherein it was held that expenditure incurred by the assessee on installation of electricity line for getting power and instead of generating itself was to run the factory efficiently was

allowable as revenue expenditure. Similarly, the Hon'ble Karnataka High Court in the case of CIT Vs Vanaja Textiles Ltd. (1994)208 ITR 161 (Ker) held that expenditure incurred for new electricity line was allowable as revenue expenditure. Similarly, in the case of ITO Vs AIMS Oxygen (P) Ltd. (1983) 16 TTJ (Ahd)360 wherein, the assessee incurred the expenditure of Rs.62,147/- for installation of stand by electricity line which it obtained from the Gujarat Electricity Board. The ITO disallowed the expenditure as capital expenditure . The Tribunal observed that the assessee did not get any advantage of enduring nature as the duration of agreement with the Electricity Board was of seven years. The assessee had not got any asset by incurring the expenditure.

6. We have heard the rival submission considered the facts, and perused the material on record. We find that if the assessee's company wanted to enhance its power capacity for its business for which payment on account of service line charges, sub station charges and service connection charges and pro-rata charges totaling to Rs.49,73,929/- were paid to DGVCL. It is noticed that the assessee has claimed these expenditure as revenue expenditure on the ground that no new asset came into existence right to tap the service line for giving power on property of DGVCL which will maintain the same. It

has been mentioned in the letter of DGVCL addressed to the company dtd. 30.07.2009 and 20.08.2009 that DGVCL will have the right to tap the service line for giving power to any other consumer in accordance with relevant I.E. Act. In view of the facts, we find that the assessee company did not acquire right on those service line which were under the control of DGVCL which is free to use the same for distributing power to other consumers. The learned ITO placed reliance in the case of Mahindra & Mahindra v. JCIT [2010] 36 SOT 348 (supra) wherein the ITAT held that non refundable consumer contribution/service charges paid by the assessee to MSEB on own account of availing additional power is on commercial consideration which is in the nature of revenue expenditure and hence, allowable. Similarly, Hon'ble Gauhati High Court in the case of CIT vs. Makhan Sarmah Sarvapandit (supra) held that expenditure incurred by the assessee in installation of electricity lines for getting power instead of generating itself was to run the factory efficiently was allowable as revenue expenditure. Thus, we are of the considered view that the expenditure incurred on account of payment for electricity line for acquiring additional power for facility for running his factory, the expenditure so incurred thereon would be in the nature of revenue as no new asset came into existence under the ownership of the assessee. Nor the assessee would have granted

any benefit from such expenditure as the assessee was not the owner of the facility provided by DGVCL and same is being non refundable service charges. Therefore, we do not find any infirmity in the order of learned CIT(Appeal), accordingly, the same is upheld. Accordingly, ground 1 to 3 in the revenue appeal are therefore, dismissed.

7. Ordered pronounced in the open court on 27-06-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

Surat, dated : 27.06.2018

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

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

1. अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त(अपील) / The CIT(A), 4. Pr. CIT
- 5.विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,सूरत/ DR, ITAT, Surat; 6. गार्डफाईल / Guard file.

By order

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Assistant Registrar, Surat

BVC