

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.2077/Kol/2017
Assessment Year :2002-03

Peerless Hotels Limited Peerless Inn, 12, J.L.Nehru Road, Kolkata-700 013 [PAN No.AABCP 9484 D]	V/s.	DCIT, Circle-8(2) Aayakar Bhawan, P-T Choringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitro Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri C.J. Singh, JCIT, SR-DR
सुनवाई की तारीख/Date of Hearing	21-02-2019
घोषणा की तारीख/Date of Pronouncement	17-05-2019

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2002-03 arises against the Commissioner of Income Tax (Appeals)-3, Kolkata's order dated 28.07.2017 passed in case No.1874/CIT(A)-3/Cir-8(2)/15-16/Kol, involving proceedings u/s 254 r.w.s. 147 r.w.s.143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. It transpires during the course of hearing that the assessee has raised six substantive grounds in the instant appeal seeking to reverse both the lower authorities action disallowing its building repair claim to combat corrosion, dismantling of existing worn out heating ventilation and air conditioning system, worn out, dismantling of existing out water supply facilities, new toilet fittings provision fire safety devices replacement of circuit-cum-point wiring

and replacement of electric cables expenditure involving sums of ₹134.99, ₹2.28, ₹18.34, ₹28.71, ₹603 & 26.19 (in lac); respectively as capital expenditure.

3. We have heard both the parties. Case file perused.

4. The CIT(A)'s detailed discussion affirming the Assessing Officer's action treating the assessee's claims as revenue expenditure reading as under:-

DECISION: *It has been stayed that the Hotel Peerless Inn Kolkata was housed in an old building which was earlier occupied Ritz Continental Hotel. The assessee came to occupy the said hotel premises from the government of West Bengal on lease basis in 1993. It was found that the building was suffering from structural problem and therefore the assessee appointed a consultant to examine the damages and defect. In this regard tests were conducted by the Construction & Engineering Department, Jadavpur University which identified major damages and proposed remedial measure. Several sophisticated tests were conducted to identify the damages. The tests conducted were:*

- (a) Ultrasonic Pulse Velocity Test using PUNDIT
- (b) Half Cell Potentiometer Survey using CANIN.
- (c) None destructive in-suit test using SCHMIDT'S Concrete test hammer.

The report highlighted several defects and damages which included:

Accordingly, the contractor had to carry out extensive repairs, The total of which came to Rs.134.99 lacs. Repairs were also carried out to the other systems as follows:

- (a) Heating, Ventilation & Air Conditioning
- (b) Water Supply System
- (c) Toilet Upgradation
- (d) Fire Protection System-Detection
- (e) Electric Installation-Circuit cum point wiring and other work

It is observed that the total project cost for Heating, Ventilation & Air Conditioning system was Rs.184.45 lacs. Out of which the assessee has suo moto capitalized the amount of rs.182.17 lacs. However, the expense of rs.2.28 lacs which pertains to dismantling expenses has been claimed as revenue expenditure.

As regard water supply system the total expenditure was Rs.88.49 lacs out of which Rs.70.15 lacs was treated as Capital expenditure and Rs.18.34 lacs was treated as revenue expenditure. The A/R of the assessee has conceded the fact that the entire expenditure should have been capitalized as the entire system has been re-laid.

Similarly, fire protection system has been re-laid at the cost of rs.13.87 lacs. The cost of sprinklers of rs.7.84 lacs was capitalized and the balance expenditure of Rs.6.03 lacs was treated as Revenue expenditure. The A/R of the assessee has conceded the fact that the entire expenditure should have been capitalized as the entire system has been re-laid.

Toilets have been upgraded. Electric system and electric circuit breakers have been upgraded.

The entire expenditure made has to be viewed in totality and it is seen that it is towards structural repairs and renovation work which has been undertaken with the sole purpose of up-gradation and modernization of the hotel and the amenities and services provided therein. These changes have been made to give the hotel a

modern and sophisticated look with upgraded amenities and services. These structural changes give enduring and long term benefit to the assessee. On these set of facts it has to be examined whether the expenditure is revenue or capital in nature. A similar issue regarding upgradation of standard of the hotel was before the hon'ble Allahabad High Court in the case of *U.P. Hotels Learned*. [391 ITR 203], wherein it has been held to be capital expenses. In deciding the issue reliance was placed on the order of the Apex court in the case of *Sri Mangayarkarasi Mills Pvt. Ltd.* [315 ITR 114 (SC)]. The Apex Court has observed as follows:

15. Moving on to the issue of 'current-repairs' under section 31 of the Act, the decision of this Court in *Saravana Spg. Mills (P) Ltd's* case ((supra) is again relevant. This court has laid down that in order to determine whether a particular expenditure amounts to 'current repairs' the test is "whether the expenditure is incurred to 'preserve and maintain' an already existing asset and not to bring a new asset into existence or to obtain a new advantage. For 'current repairs' determination, whether expenditure is revenue or capital is not the proper test.: It is our opinion that the entire textile mill machinery cannot be regarded as a single asset, replacement of parts of which can be considered to be for mere purpose of 'preserving or maintaining' this asset. All machines put together constitute the production process and each separate machine is an independent entity. Replacement of such an old machine with a new one would constitute the bringing into existence of a new asset in place of the old one and not repair of the old and existing machine. Also, a new asset in a textile mill is not only for temporary use. Rather it gives the purchaser an enduring benefit of better and more efficient production over a period of time. thus, replacement of assets as in the instant case cannot amount to 'current repairs". The decision in *Saravana Spg. Mills (P) Ltd.'s* case (supra) clearly mentions that replacement of a derelict ring frame by a new one does not amount to 'current repairs'. Further in *ballimal Naval Kishore's* case (supra) this Court has held that a new asset or new/different advantage cannot amount to 'current repairs', which has been subsequently approved in the *Saravana Spg. Mills (P) Ltd's* case (supra). For these reasons, the expenditure made by the assessee cannot be allowed as a deduction under section 31 of the Act. The judgment of this court in the *Saravana Spg. Mills (P) Ltd's* case (supra) maintains two exceptions in which replacement could amount to current repairs, namely:

"Where old parts are not available in the market (as seen in respect to he cas of *CIT vs. Mahalakshmi Textile Mills Ltd.* (AIR 1968 SC 101), or Where old parts have worked for 50-60 years."

In the instant case, the assessee has not claimed any of the above stated exceptions. The *Saravana Spg. mills (P) Ltd.'s* case (supra) also restricts the scope of 'current repairs' to repairs made to machinery, plant and/or furniture. In this case, replacement of machie can at best amount to a repair made to the process of manufacture of yarn. Further this court has also observed in *Saravana Spg. Mills (P) Ltd's* case (supra) that if replacement was held to be 'current repair' in such cases, section 31(i) will be completely redundant and absurdity will creep in because repair, implies existence of a part of the machine which has malfunctioned, which is impossible in the case of such replacement. Thus, this replacement expenditure cannot be said to be 'current repairs' after the decision in the *Saravana Spg. Mills (P) Ltd's* case (supra).

16. Given that section 31 of the Act is not applicable to the said expenditure of the assessee, the next issue is whether it can be considered 'revenue expenditure' of the nature envisaged under section 37 of the Act. The *Saravana Spg. Mills (P) Ltd's* case (supra) holds that expenditure is deductible under section 37 only if it (a) is not deductible under sections 30-

36, (b) is of a revenue nature, (c) is incurred during the current accounting year and (d) is incurred woe for the purpose of the business. We are satisfied that the assessee's expenditure satisfies requirements (a), (c) and (d) as stated above. The dispute is with respect to the nature of expenditure, that is, whether it is Revenue or capital in nature.

17. We are of the opinion that the expenditure of the assessee in this case is capital in nature and there is sufficient judicial precedent to support this view in the case of Travancore Cochin Chemicals Ltd. v. CIT [1977] 106 ITR 900 this court held that expenditure is of a capital nature when it amounts to an enduring advantage for the business and repair is different from, bringing a new asset for the business. Further, in Lakshmiji Sugar Mills (P) Co. v. CIT AIR 1972 SC 159 it has been held by this court that bringing in respect to existence a new asset or an enduring benefit for the assessee amounts to capital expenditure. we have already explained why replacement, in this case, amounts to bringing into existence an new asset and also an enduring benefit for the assessee. It is clear then that expenditure of the assessee here is not of a Revenue nature and thus, cannot be claimed as a deduction under section 37 of the Act.

In view of the decision of the Apex Court, the hon'ble Allahabad High Court held that repairs made to two floors of the hotel were capital in nature. In this case the entire hotel building and the various systems have been completely changed or refurbished which has lead to up gradation of the hotel. These changes have brought into effect a completely modernized hotel. The benefits are long tem and enduring in nature. Respectfully, following the decisions in the case of UP Hotels Ltd. (supra) and Sri Mangayarkarasi Mills Pvt Ltd. (supra), the expenditure of Rs.216.54 lacs on account of modernization of the hotel is treated as capital expenditure. The action of the AO is hereby confirmed. The appeal of the assessee on the issue of expenses discussed in the second limb (Ground No;. 2 to Ground No.7) is herby dismissed."

5. Case file comprising of assessee's investigation report from its consultant to investigate the cost of musty smell in hotel rooms and lobby and Kolkata tenancy agreement between the assessee and its sister concern dating back to 20.07.1992 taking a property on lease, tribunal's order in assessment year 2010-11 dated 14.05.2018, CIT(A)'s order dated 09.02.2011 in the impugned assessment year, assessment order dated 20.03.2007, audited accounts as on 31.03.2002, sec. 148 notice reply, return filed in furtherance to sec. 148 notice re-opening reasons and first round tribunal's order dated 27,.02.2015 in Revenue's appeal ITA No.948/Kol/2011; respectively stands perused.

6. Both the learned representatives inform us during the course of hearing that the tribunal's first round order had restored the Revenue's appeal

preferred against the CIT(A)'s order accepting this claim; had restored the issue(s) back to the Assessing Officer as under:-

7. We have heard both the Id. Counsel and perused the record. The Id.DR submitted that the assessee is running a hotel. In the hotel building huge amount of capital expenditure have been incurred, which have been termed as repairs. The Id.DR has submitted that the assessee itself admitted that the assessee obtained benefit of enduring nature from the expenditure. He further submitted that when there is no dispute that the assessee obtained benefit of enduring in nature, the expenditure involved was capital in nature and it cannot be treated as repair expenditure. The Id. DR further submitted that section 30 and 31 do not permit allowance as revenue expenditure, which are in the nature of capital expenditure. Hence, the Id.DR submitted that since expenditure involve increased life of the asset of the assessee, the expenditure should be classified as capital expenditure.

7.1 The Id. Counsel of the assessee on the other hand has relied on the decision of the Id.CIT(A). He also relied on the decisions as referred to by the Id.CIT(A). He submitted that the Id. CIT(A) after considering the submissions of the assessee has rightly concluded that expenditure involved was revenue in nature. He submitted that the assessee company had engaged consultants and upon consultants advice it has carried out repairs and renovation. Though he accepted that this expenditure enhanced the life of the building he submitted that expenditure was revenue in nature. Hence, the same has to be allowed as revenue expenditure.

7.2. Upon careful consideration, we note that the assessee itself has accepted that the renovation and refurbishment work done by the assessee was meant to bring an advantage of enduring nature. When the renovation and refurbishment work done by the assessee gives benefit of enduring nature to the assessee, it is settled law that the same qualifies as capital expenditure. The AO observed that major structural work including that of basement, columns, beams, roof cover, main building (different floors) was carried out by the assessee. In these circumstances, the AO has opined that expenditure involved was capital in nature.

8. As against the above the Id. CIT(A) accepted the expenditure as revenue in nature. We note that the Id.CIT(A) himself has accepted that when the expenditure results in bringing into existence a new asset or a new advantage to the assessee the it is to be treated as capital nature but where the expenditure is incurred to remedy the effect of several years' of wear and tear or neglect or to preserve and maintain an already existing asset, in that case it is to be allowed as revenue expenditure. Still he has ignored the AO's finding that benefit of enduring occurred to the assessee. Ld.CIT(A) has not cogently dislodged this finding. We find that in making the above discussion the Id.CIT(A) has not examined the nature of renovation & refurbishment work done by the assessee in detail. The Id.CIT(A) has only considered the theoretical aspect and after considering the submissions of the assessee concluded that expenditure involved was revenue in nature. As expounded by the Hon'ble Apex Court in the case of CIT Vs. Saravana Spinning Mills P.Ltd reported in 293 ITR 201, that the current repair expenditure is incurred to "preserve & maintain" an already existing asset. The expenditure which results to bring a new asset into existence or

to obtain a new advantage can not be termed on current repair. Hence, in our considered view such an order of the Id.CIT(A) is not sustainable. However, it is also to be accepted that the AO has also not examined the issue in detail regarding the nature of expenditure incurred by the assessee. In this regard, we note that the Hon'ble Apex Court in the case of Kapurchand Shrimal Vs. CIT reported in (1981) 131 ITR 451(SC) has held that it is the jurisdiction as well as the duty of the appellate authority to correct the lacunae in the proceedings under appeal and remit the case if needed. In this view of the matter, in our considered opinion the issue needs to be remitted the matter to the file of the AO. The AO is directed to examine the issue in detail regarding the nature of expenditure incurred by the assessee and then decide the same afresh as per law.

8.1 As regards Id.CIT(A)'s consideration that expenditure incurred was with relation to tenanted property, we find that the issue has been duly explained and clarified by insertion of explanation after clause (c) of section 30. Hence, this plank of giving relief is also not sustainable.”

It is in furtherance to learned co-ordinate bench' instant remand direction that the assessee's claim stands treated as capital expenditure in the impugned consequential round.

7. Both the parties reiterate their respective stands against and in support the lower authorities action declining the assessee's expenditure heads as capital in nature. We find from the paper book that this assessee is admittedly running its hotel hospitality business form a tenanted premises. The very kind of issues appears to have arisen between the parties in assessment year 2010-11 in this tribunal. The Revenue had its appeal ITA 1896/Kol/2016. Learned co-ordinate bench's order dated 14.05.2018 dismissed the same vide its following detailed discussion:-

7. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹1,03,71,530/- on account of capital expenditure.

8. The assessee during the year has claimed an expense of ₹1,03,71,530/- on account of repair and renovation of room. The AO during the course of assessment proceedings observed that repair and renovation of rooms expense were incurred at Port Blair were inclusive on the following:-

- i) flooring of marble tiles
- ii) POP work of ceiling
- iii) wood work

iv) fresh furniture purchase etc.

On question by the AO for treating the aforesaid expenses as capital in nature, the assessee failed to provide any evidence to substantiate its claim.

The AO also observed that assessee in earlier year has not incurred repair and renovation expense more than 30% of such expenditure. Therefore, AO treated the same as capital expenditure and allowed depreciation @ 10% on the building and accordingly remaining amount was disallowed and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A). the assessee before Ld. CIT(A) submitted that it is occupying of the building as tenant and paid the rent to landlord for ₹1,25,500/- per month and 10% of gross revenue. As per the agreement, the assessee was to pay all the tax such as, municipal tax, building tax, electricity charges, water tax, and all other taxes. The assessee was also under the obligation to maintain the exterior and interior at its own cost. The hotel building is located on the sea front and therefore, it was widespread damaged during Tsunami occurred in 2004. Therefore, the expenses were incurred to maintain the hotel building in working condition.

9.1 The assessee also filed details of the expenses incurred on the renovation and repair of building which is placed on pages 11 and 12 of the appellate order which is reproduced below:-

“08. For purpose of repair and renovation of building, work was entrusted upon:

<i>A King Traders, P-2, Ajaynagar, Santoshpur, Kolkata75</i>	<i>Rupees</i>
<i>(1) Dismantling of RCC concretes with removal of Rubbish at shirting area, providing and making Plain cement concrete 2 ½ To 3” trick mortar, 4” thick wall for luggage room and Passage area 1:5 cement mortar; sand cement platering 1:5 cement mortar luggage room and passage area</i>	<i>261621</i>
<i>(2) Repair and renovation of rooms</i>	<i>11301856</i>
<i>(3) Repair and renovation of lobby and restaurant</i>	<i>2616026</i>
<i>(4) Repair and renovation of ground floor corridor</i>	<i>54845</i>
<i>(5) Renovation and repair of kitchen, bakery chef office, F &B office, security office, garbage store, butchery</i>	<i>668174</i>
<i>(6) Repair and renovation of 1st floor corridor</i>	<i>228407</i>
<i>(7) Repair and renovation of 1st floor ladies & gents toilet</i>	<i>226512</i>
<i>(8) Repair and renovation of ground floor ladies & gents Toilet repair and renovation of lobby and kitchen</i>	<i>78735</i>
<i>(9) Repair & renovation of housekeeping and GM office</i>	<i>212878</i>
<i>(10) Repair and renovation of small banquet hall</i>	<i>131484</i>
<i>(11) Repair and renovation of 1st floor banquet hall</i>	<i>317193</i>
<i>(12) Niche wall, ceiling, store case repair and renovation</i>	<i>317193</i>

(13) Fixing of room mirror	676733
(14) Removing of old door and re-fixing the same with necessary	213150
(15) Fitting, polishing & painting removing old shaft Door with modification of shutter, outside	78735
(16) Veneer pasting and inside painting	<u>212606</u>
	17505477
B. M.L. Roy & Co Sanitations Pvt. Ltd. 188A Rashbehari Avenue, Kolkata-29 Supply of sanitary materials	949428
C. Indian Marble Traders: Supply of marble tiles D 504 Chetla road, Kolkata-27	1544685
D. M.Nagrajan Post Box 632, Seashore Road, Anarkali, Haddo Post Office, Port Blair 744102 Supply carriage of loose earth including leveling and Compacting the area using roller, bitumen work door on The pathway from the entrance to the cottages	1251600
E. Others: various other works in connection with repair and Renovation of building	<u>701775</u>
	21952965

Expenses included under the head 'others' are comprised of Rupees
Andaman

(1) DMP Nirman Pvt. Ltd. 58/63 Prince Anwar Shah Road, Kolkata-45	
A. Electrical Work Low tension feeder pillar box with Hinged door supply and fixing 6304 TDDN fuse switch Unit 630A HRC fuse and feeder Pillar 440 Volt L.T supply For light points, cabling works, distribution arrangement at Panel for light load and power load. Distribution wiring, Telephone wiring and earthing	4722195
B. Plumbing work, sanitary work, water supply net work Labour charges for fixing tiles at toilet	3116099
Saroodaya servies	
(2) Office No.34, A Wing, Trilok, Dr. Ambedkar Road, Bandra West, Mumbai-400050 Kitchen Utensils	1029174
(3) SAENT India 39 Rifle Range Road, Kolkata-19 Consultancy Services in respect of electrical work	150000
(3) Various other works	<u>879174</u>
	9896642
AMC Charges: Kolkata	2780822
Cost of material purchased for maintenance both Civil and electrical repair work	4028223

<i>Pest control</i>	295392
<i>Repair of office equipments</i>	<u>16071</u>
	17017150

The assessee before the Learned. CIT-A claimed that the entire expense incurred on the repair and renovation of hotel building was eligible for deduction u/s. 30(a)(i) of the Act. The assessee in support of its claim also relied on the following judgments:-

- i) Hon'ble Bombay High Court in the case of *New Shorrock Spinning and Manufacturing Co. Ltd. vs. CIT (1956) 30 ITR 338*
- ii) *Bombay Steam Navigation Co. Pvt. Ltd. vs. CIT (1965) 56 ITR 52(SC)*
- iii) *CIT vs. ICI (India) Pvt. Ltd. (1983) 139 ITR 105, 106 (Cal)*

Ld. CIT(A) after considering the submissions of assessee deleted the addition made by the AO by observing as under:-

“5.2 I have considered the facts of the case and the submissions of the appellant. The AO disallowed an amount of Rs.1,03,71,530/- incurred for repair and renovation of rooms treating them as capital expenditure. the judgements relied upon by the appellant have been carefully perused and I find force in their contentions Bombay High Court in the case of New Shorrock Spinning and Manufacturing Co. Ltd. Vs. CIT (1956) 30 ITR 338 held that “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 evidence, nor, is its object the obtaining of a new or fresh advantage. This can be the only definition of repairs because it is only by definition of repairs, that the expenditure is revenue expenditure”. The assessee has only renovated the room and other furniture in room which was damaged by the tsunami. The appellant has pointed out that due to the expenditure on repair and renovation of their hotel rooms, room sales which was languishing at Rs.49.52 lacs in AY 2009-10 went on increasing in each succeeding year and reached Rs.600.79 lacs in AY 2016-17. This improvement in operations evidences that repair expenses were incurred to facilitate improvement in trading operations.

Considering the aforesaid decisions in the case of Empire Jute Co. Ltd. (supra) and other cases relied upon by the appellant, I am of the opinion that the expenditure incurred by the assessee is in the nature of revenue expenditure. Hence the amount of R.1,03,71,530/-- disallowed is deleted.”

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

10. Before us Ld. DR submitted that the expenditure was incurred by assessee to restore the condition of the damaged building as evident from the expenses discussed in the assessment order. Therefore, it cannot be said that it was a routine repair and renovation work incurred by assessee and assessee. The assessee incurred such expenses in the financial year 2009-10 whereas the tsunami happened in the year 2004. He stated that such expenses were incurred after laps of five years of tsunami. Therefore, the plea taken by Ld. AR that the

expenses were incurred as a result of damaged happened in tsunami in the hotel building does not hold good.

On the other hand, Ld. AR reiterated the same arguments that were made before Ld. CIT(A).

11. We have heard the rival contentions of both the parties and perused the material available on record and the case laws cited by Ld. AR for the assessee. We have heard the rival contentions and perused the materials available on record. The assessee in the year under consideration has treated the expenses for the repairs and renovation of rooms for Rs.1,03,71,530/-as revenue in nature. However the above expenses were treated by the AO as capital in nature. Accordingly the AO disallowed the same. However the learned CIT-A reversed the order of the AO by treating the same as the revenue in nature.

From the above discussions we note that the following facts have not been disputed:

1. The expenses were incurred by the assessee on the maintenance of the hotels run by it in Kolkata and Port Blair.
2. The hotel property was taken by the assessee on rental basis. As per the agreement the assessee was liable to bear the cost of the repair & maintenance on the exteriors and interiors of the property the copy of the tenancy agreements is placed on page 72-77 of the paper book.
3. The assessee was into the business of Hotels Industries.
4. There was no fixed asset coming into existence out of the expenses incurred by the assessee as discussed above.
5. The expenses were incurred by the assessee for its effective running of the business and to restore the building to its original conditions after destruction of TSUNAMI.
6. As a result of the expenses the revenue of the assessee has increased manifolds. Therefore these expenses are directly connected with the trading operations of the assessee.
7. The genuineness and reasonableness of the expenses have not been doubted by the lower authorities.

In view of above we note that the expenses were incurred by the assessee on the rented premises. There was lot of damage to the properties as a result of tsunami. There was no fixed asset coming into existences out of such expenditure.

We also note that in the similar circumstances various courts have decided the issue in favour of assessee. The Bombay High Court in the case of New

Shorrock Spinning & Manufacturing Co. Ltd. reported in 30 ITR 338 has held as under:

“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, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of ‘repairs’ because it only by reason of this definition of repairs that the expenditure is a revenue expenditure.”

Similarly we also rely on the order of this Tribunal in the case of DCIT Vs. Kalyanapur Cement Ltd. In ITA No.1396 & 1397/Kol/2011 for A.Y 2006-07 & 2007-08 dated 14.10.2014. The relevant extract of the order is reproduced below:-

“10.We have heard rival submissions and gone through facts and circumstances of the case. The assessee has filed complete details of repair and maintenance expenses and also a certificate from Chartered Engineer dated 15.12.2008, who has certified that the expenses under the head repair and maintenance during the year ending 31.03.2007 has been procurement of worn out components and certain capital assets or group of assets. According to him, these worn out parts are in the context of capital asset where these are used and also from a small fraction of the total value of corresponding capital asset in each case. He certified the expenses and summarized section wise as under:-

1. Line Stone Captive Quarry	Rs. 27.15 lacs
2. Crushing Section	Rs. 45.53 “
3. Raw Mill Section	Rs.224.90 “
4. Kiln	Rs. 79.89 “
5. Coal Mill	Rs. 25.10 “
6. Clinker Grinding Section	Rs, 69,24 “
7. Slag Grinding Section	Rs. 53.39 “
8. Packing Plant	Rs. 4.63 “
9. Miscellaneous	<u>Rs. 5.64 “</u>
Total	Rs.526.46 “

Learned. Counsel for the assessee before us contended that due to unsatisfactory financial position of the company for few years in the past, it could not undertake the repair and maintenance of plant and machinery and its capacity utilisation was in the range of 37.46% against the industry average of 90. According to him to make the situation improve, the assessee company in FY 2006-07 relevant to AY 2007-08 undertook the overdue repairs and maintenance for plant and machinery and repair and replacement of internal control purpose was started. The assessee company has not increased in the rated capacity of any of the plant/equipment by virtue of this repair and maintenance. Factually, the assessee has carried out repair and maintenance, as is evident from the above discussion. In similar circumstances, Hon'ble Bombay High court in the case of CIT vs. Howgule & Co. Pvt. Ltd. (1995) 214 ITR 523 (Bom) has considered the expression ‘current’ preceding ‘repairs’ as under:

“i) The amount should be paid on account of repairs.

(ii) '**Current repairs**' means repairs undertaken in the normal course of user for the purpose of preservation maintenance or proper utilisation or for restoring it to its original condition

(iii) '**Current repairs**' do not mean only petty repairs or repairs necessitated by wear and tear during the particular year.

(iv) Such repairs should not bring into existence nor obtain a new or different advantage.

(v) The quantum of expenditure nor the fact that in the process of repairs, there was substantial replacement of the parts of machine or ship is decisive of the true nature of the expenditure.

(vi) The original cost of the asset is not at all relevant for the ascertainment of the true nature of the expenditure on repairs.

(vii) The replacement cost of the asset may however, at times may be used as an indicator of the true character of the expenditure. If the expenditure on repairs added to the written down value or disposal value exceeds the replacement cost of the asset, a presumption is possible that it is not a revenue expenditure but expenditure of capital nature. Such presumption, of course, would be rebuttable.

(viii). The expression '**current**' preceding '**repairs**' appears to have been used by the legislature with a view to restricting the allowance to expenditure incurred for preservation and maintenance thereof in its current state in contradiction to that incurred on any improvement or an addition thereto [CIT v. Chowgule & Co. Pvt. Ltd (1995) 125 CGTR (Bom) 442, 448 = (1995) 214 ITR 523 (Bom)]. In the facts of that case, the Tribunal, on investigation of the nature of the repairs undertaken by the assessee, recorded a categorical finding of fact that it did not result in emergence of a new ship but amounted, in substance, to current repairs to the existing ship. The fact that old parts of the ship were replaced by new parts was not relevant for determining whether the expenditure was on '**current repairs**' or not. Therefore, the expenditure claimed by the assessee amounted to '**current repairs**', allowable as a deduction under section 31."

Hon'ble Supreme Court in the case of CIT v. Saravana Spinning Mills (P) Ltd. (2007) 7 SC 298 has held unambiguously that 'each machine in a segment of a textile mill has an independent role to play in the mill and the output of each division is different from the other.'

We also note that the assessee was to bear the cost on renovation for the maintenance of interior and exterior of the hotel building. The relevant extracts of the tenancy agreement is placed on page 73 of the paper book. In view of above we hold that the expenses incurred by the assessee on the leasehold premises are revenue in nature and the same cannot be treated as capital in nature. Thus we do not find any reason to interfere in the order of Id. CIT-A. Hence the ground of appeal of the Revenue is dismissed.

8. It is therefore clear that the learned co-ordinate bench concluded that the assessee's expenses incurred on leasehold premises are revenue and

same cannot be treated as capital in nature in view of hon'ble Delhi high court's decision as well as this tribunal's order in (supra). Learned Departmental Representative fails to dispute that none of the assessee's impugned claim has given rise to any capacity expansion or created new asset. We therefore adopt the above detailed reasoning mutatis mutandis to delete the impugned capital expenditure. The Assessing Officer is directed to frame consequential assessment treating the assessee's six impugned claims as revenue expenditure in nature as per law. The instant appeal succeeds on merits

9. Coming to assessee's petition dated 15.02.2019 seeking to raise its additional ground challenging validity of the impugned re-opening, learned counsel fairly states that he is no more wishes to press for the same in view of our favourable adjudication on merits. The same is accordingly, dismissed as not pressed.

10. This assessee's appeal is partly allowed on merits in above terms.

Order pronounced in the open court 17/05/2018

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,
*Dkp

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 17/05/2019 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Peerless Inn, 12, J.L. Nehru Road, Kolkata-13
2. प्रत्यर्थी/Respondent-DCIT, Aayakar Bhawan, P-T Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।