

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 1933 & 1934/PUN/2017

निर्धारण वर्ष / Assessment Years : 2006-07 & 2008-09

MAHLE Behr India Private Ltd.  
(Formerly known as Behr India Ltd.)  
20 Milestone, Pune Nashik Highway,  
Village Kuruli, Taluka : Khed, Chakan  
Pune-410 501.  
PAN : AABCB2186L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-8, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 2160 & 2162/PUN/2017

निर्धारण वर्ष / Assessment Years : 2006-07 & 2008-09

The Assistant Commissioner of Income Tax,  
Circle-9, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. MAHLE Behr India Pvt. Ltd.  
( Formerly known as Behr India Ltd.)  
Gat No. 626/1/2 & 622/1/0,  
Milestone, Pune Nashik Highway,  
Village Kuruli, Taluka: Khed,  
Pune-410 501.  
PAN : AABCB2186L

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.D. Onkar  
Revenue by : Shri Milind Chahure

सुनवाई की तारीख / Date of Hearing : 04.10.2019

घोषणा की तारीख / Date of Pronouncement : 04.10.2019

### **आदेश / ORDER**

#### **PER PARTHA SARATHI CHAUDHURY, JM :**

This bunch of cross appeals preferred by the assessee as well as the Revenue emanates from the separate orders of the Ld. CIT(Appeals)-6, Pune for the assessment years 2006-07 & 2008-09 dated 22.05.2017 and 25.05.2017 respectively as per the grounds of appeal on record.

2. At the very outset, during the time of hearing, both the parties admitted that prima facie in all these appeals, the question pertains to the allowability of product development expenses incurred by the assessee.

3. The Ld. AR of the assessee submitted that these issues were decided in favour of the assessee by the Pune Bench of the Tribunal in assessee's own case in ITA No.566/PUN/2013 and ITA No.645/PUN/2013 for assessment year 2002-03 and in ITA No.2637/PUN/2016 for the assessment year 2001-02. The facts were that the assessee was engaged in the business of manufacturing of automotive air conditioning systems, parts and components. The assessee had furnished the return of income declaring net loss of Rs.11,69,72,270/-. The assessment order was passed u/s. 143(3) of the Act and loss was assessed at Rs.12,22,41,490/-. In the said assessment proceedings the Assessing Officer had made an addition of Rs.42,21,665/-,

which was claimed as an expenditure under the head 'Development Cost'. The assessee had claimed the said special development cost paid to M/s. Behr GmbH & Co., Germany for preparation of design and drawing and prototype samples. The Assessing Officer had capitalized the said expenditure and had allowed depreciation. The CIT(A) was of the view that where originally the assessee had not claimed the said expenditure but had claimed during the course of scrutiny proceedings, hence, the same was not allowable. The assessee carried the matter before the Tribunal wherein it was pointed that the said expenditure was incurred by the assessee in assessment year 1998-99 i.e. before it commenced production and therefore the same was treated as deferred revenue expenses in its books of account and was amortized from assessment year 1999-2000 onwards and deduction u/s. 35AB of the I.T. Act was claimed. The said expenses were incurred on testing and validation of the product manufactured by the assessee and hence, the claim of special development cost.

4. In this regard, the Tribunal was of the opinion that the expenditure that were incurred were not for development of new product but it is for improvising of the product manufactured by the assessee and therefore, such expenditure acquired the nature of revenue expenditure in the hands of the assessee and hence were allowable as per following observations:

*"10. We have heard the rival contentions and perused the record. The assessee was engaged in the business of manufacturing of air conditioners and its components which were in turn used in the automotive industries. The assessee in order to test the validation of the product incurred expenditure on a regular basis to bring in improvisation and modifications in the product as per the requirements of the customers. The said exercise was carried out by the assessee in order to test the market suitability of the products wherein the products were sent to Germany in order to test its validation, since, the final product was being sold to AE. In the first round of assessment proceedings the said expenditure was connected with the expenditure incurred in the first*

*year of commencement of business on product development and hence, the expenditure was held to be capital in nature. However, where expenditure on testing of the product which is required to be incurred on a regular basis and which does not result into creation or acquisition of any assets, then there is no merit in holding the expenditure to be of enduring benefit. The assessee is carrying out this exercise of modification and improvisation in the products in order to test suitability in the environment in which it is to be used and hence, the said expenditure is duly allowable in the hands of the assessee as revenue expenditure. The bill wise nature of expenses are tabulated at page 6 of the order of CIT(A) and perusal of the same reflects expenditure to be revenue in nature. Once, the expenditure has not been incurred for the development of new product but is for the improvisation of the products already being manufactured by the assessee, then such an expenditure which is a regular expenditure incurred by the assessee for smooth and efficient working of its business, is to be allowed as revenue expenditure in its hands.....”*

Respectfully following the aforesaid findings of the Tribunal for assessment year 2002-03 in assessee's own case, we allow the grounds raised by the assessee and corresponding grounds raised by the Revenue are dismissed.

5. In the result, **appeals of the assessee 2006-07 & 2008-09 are allowed and appeals of the Revenue for the assessment years 2006-07 & 2008-09 are dismissed.**

Order pronounced on 04<sup>th</sup> day of October, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> October, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	04.10.2019	Sr.PS/PS
2	Draft placed before author	04.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		