

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-2 : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.4744/Del/2017
Assessment Year: 2011-12

TPR Autoparts Mfg. India Pvt. Ltd., Mayur Batra & Co., CA, 7, Barakhamba Road, New Delhi.	Vs	DCIT, Circle-25(2), New Delhi.
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PAN: AACCT9433D

(Appellants)

(Respondents)

Assessee By	:	Shri C.S. Aggarwal, Sr. Advocate
Deptt. By	:	Shri H.K. Choudhary, CIT, DR & Ms Nidhi Sharma, Sr. DR

Date of Hearing	:	17.09.2019
Date of Pronouncement	:	13.12.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 27th December, 2016 of the CIT(A)-44, New Delhi, relating to the assessment year 2011-12.

2. Facts of the case, in brief, are that the assessee company is a wholly owned subsidiary of M/s Teikoku Piston Ring Co. Ltd. (Japan). It had been incorporated on 27.03.2008 with the main object to carry on the business to manufacture, export, buy and sell and otherwise deal in -mouldedø automobile products i.e.

piston rings, cylinder liners, valve seat rings and other automotive parts. It is the third year of its existence, though effectively it is the second year of production after its set up and commencement of business in the FY 2009-10. It filed its return of income on 29.11.2011 declaring a loss of Rs.6,45,23,822/-. Since the assessee had entered into certain international transactions with its AEs, the Assessing Officer referred the matter to the Transfer Pricing Officer u/s 92CA of the Act for determination of the arm's length price of such international transactions. The TPO, during the course of TP assessment proceedings, observed that the assessee company has undertaken the following international transactions with its AEs:-

No.	Nature of transaction	Method	Amount (in Rs.)
1	Purchase of raw Materials/assets/spares	TNMM	5,85,47,963
2	Payment of royalty	TNMM	76,32,183
3	Reimbursement of expenses to AE	-	9,14,253

3. From the various details furnished by the assessee, the TPO noted that the assessee has considered six comparables with adjusted margin of (-) 6.53% after considering capacity utilization of 51.29%, the details of which are as under:-

Sl. No.	Company Name	Margin (%)	Capacity Utilisation	Adjusted taking utilization at 51.29%	Margin capacity at
1	KAR Mobiles Ltd.	4.72%	94.94%	-17.99%	
2.	Perfect Circle India Ltd.	10.64%	75.90%	2.42%	
3.	Rane Engine Valve Ltd.	7.44%	86.53%	-10.47%	
4.	Samkrp Pistons & Ring Ltd.	9.22%	103.80%	-7.27%	
5.	Shriram Pistons & Rings Ltd.	14.84%	93.80%	-2.24%	
6.	Triton Valves Ltd.	8.11%	98.42%	-3.64%	
	Average		92.23%	-6.53%	

4. He, therefore, asked the assessee to explain why the international transaction carried out by it should not be benchmarked by using the profit margin of 8.18% as proposed by him wherein he retained the four comparables selected by the assessee and included two new comparables. It was argued by the assessee that during this financial year, it is only engaged in the manufacture of cylinder liners and earned operating revenue of Rs.25.6 crores approximately, incurred operating cost of Rs.27.55 crores approximately and, thus, there was an operating loss of Rs.1.93 crores being 7.5% of the operating revenue. It was stated that the operation of the company shows that it is a small and medium enterprise with limited capital and small turnover with only one revenue stream i.e., manufacture and sale of cylinder liners. Further, the assessee has utilized only 51.29% of the capacity. It was further submitted that F.Y. 2010-11 is only the second completed year of its operations and it is still in the phase of setting up operations in India. It was accordingly requested for adjustment of capacity utilization.

4.1 However, the TPO was not satisfied with the arguments advanced by the assessee. Out of the six comparables selected by the assessee, the TPO retained four of them only i.e., Rane Engine Valves, Perfect Circle India Ltd., Samkrg Pistons & Rings Ltd. & Shriram Pistons & Sings Ltd., and, additionally, included two comparables, namely, Diamond Pistons & Rings Ltd. and Rane Automotive Ltd., and arrived at a profit margin of 8.18%. Accordingly, the TPO proposed an adjustment of Rs.92,05,523/-.

5. The Assessing Officer, apart from the above, noted that the assessee had incurred and claimed an expenditure of Rs.97,36,332/- on account of moulds by treating the same as revenue expenditure. On being questioned by the Assessing Officer, it was submitted as under:-

öDuring the preceding previous year (FY 2009-10) the assessee company undertook 7 manufacturing activities only for 4 months and could utilised only 7% of its installed capacity. This is evident from the Audited Financial Statements of the assessee Company. In this year ömoulds" were capitalized as part of Fixed Assets. While auditing the financial statements of the company for the F Y. 2010-11 the treatment of capitalizing ñmouldsø in F.Y. 2009-10 was re-examined since ñmouldsøbeing imported & used for the manufacturing of pistons &, rings generally had a life or less than year, since these were getting exhausted/broken & had to be discarded within in the process of manufacturing of pistons & rings. Based upon estimated useful life of such ñmoulds these were correctly considered and treated as Spares.ö

6. However, the Assessing Officer was not satisfied with the explanation given by the assessee. According to him, the assessee could not substantiate its claim that the life of moulds was less than one year. Since the assessee had changed its policy with regard to capitalization of moulds, he allowed only depreciation on the same which comes to Rs.9,42,081/-. Accordingly, the Assessing Officer made addition of Rs.87,94,251/- to the total income of the assessee.

7. The assessee filed appeal before the CIT(A). However, the CIT(A) confirmed the TP adjustment as well as the addition on account of moulds. So far as the order of the CIT(A) on account of TP adjustment is concerned, he dismissed the ground raised by the assessee by observing as under:-

Decision:-

I have considered the findings of the Ld TPO, written submission and oral arguments of Ld AR. Entire dispute against the transfer pricing order is allowability of capacity utilization. In subsequent written submission dated 19/12/2016, Ld AR has submitted list of the final comparables as taken by the TPO where the capacity utilization data is not available namely of such comparables are as under: -

- (a) Diamond Piston & Rings Ltd.
- (b) Liners India Ltd.
- (c) Rane Automotive Ltd.

Therefore, out of the six final comparable taken by the TPO in the case of three comparables, data of capacity utilization is not available. Therefore in 50% case of final comparables the data of capacity utilization is not available. Accordingly in my view in absence of capacity utilization data for 50% of the comparables, capacity utilization adjustment can be allowed while computing the PLI of the appellant. I accordingly confirm not allowing adjustment on the ground of non-availability/ reliable data for such capacity utilization.

The appellant has conducted fresh search during the TP proceedings, the TPO has considered the same and rejected on the ground of reliability of the data base and version of respective data base. Ld AR has not controverted these facts. Accordingly, fresh search conducted by the appellant is not considered. It may be mentioned here that the subsequent year or earlier years the capacity utilization was allowed to the appellant will not help the assessee in the year under consideration as reliable and accurate data may be available in respect of corresponding F.Y. when such capacity utilization was allowed. Accordingly I confirm the decision of TPO for making adjustment in arm's length price of international transaction. All these grounds of appeal are dismissed.

8. So far as the disallowance on account of mould is concerned, he also rejected the ground raised by the assessee by observing as under:-

5.3 Decision:-

I have considered the facts of the case, written submission and oral arguments of the Ld AR.

In impugned assessment year in the audited financial statement of the assessee, the moulds were claimed as spares.

I have perused certificate of certified engineer dated 24/03/2015 where he has certified that life of the moulds to achieve qualitative product as less than one year. Firstly certificate has been issued almost after four years from the end of F.Y. It does not certify whether items and quality manufactured during the impugned assessment year and as on date of issuance of certificate has remained same. Further certified engineers has mentioned in para 2 of the certificate that the conditions of moulds is not upto mark to manufacturer the qualitative products. Therefore the moulds are used for the manufacturing process even after useful life for quality product. Therefore certificate of engineer issued almost after four years from the end of F.Y. does not help much as it is difficult to assume that the quality of the products and moulds has remained same. I cannot give benefit on the basis of such certificate.

Considering the facts that the appellant in its financial in earlier A Y. treated the moulds as capital expenditure, I confirm the additions.

It may be mentioned here that the jurisdictional pronouncement of the assessee is on different facts as the product in the said case was plastic component such CD-Shell box etc and in that case moulds was treated as part of injecting molding machines. Accordingly these grounds of appeal are dismissed.ö

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

ö1. The order passed by the Ld. AO u/s 143(3) read with section 144C of the Act and by Ld. CIT (A) u/s 250(6) is bad in law and void ab-initio.

2. The Ld. AO/ TPO/CIT(A) erred in facts and circumstances of the case in determining the Armø length adjustment to the Appellantø International Transaction with Associated Enterprise (AE) for purchase of raw material, thereby resulting in the enhancement of returned income of the Appellant by Rs. 92,05,523/-

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3. That the reference made by the Ld. AO suffers from jurisdictional error as the Ld. AO has not recorded any valid and substantive reasons in the assessment order based on which he reached the conclusion that it was öexpedient and necessaryö to refer the matter to the TPO for computation of Armø Length Price (ALP), as is required under section 92CA(1) of the Act.

4. The Ld. AO/TPO/Ld. CIT(A) erred on facts and in law in the assessment of the ALP of the Appellantø International Transaction from AE for purchase of raw material and in doing so grossly erred in the following manners-

4.1 The Ld. AO/TPO erred on facts and in law in only making general statements and specious reasoning, based on presumption in Para 1.2 of the TPO order wherein it has been erroneously observed by the TPO that “*show cause letter of had remarks of filters of the Appellant, additional filters which should have been applied but not applied by the Appellant, the search process adopted by the TPO, analysis of companies sought to be rejected as comparable by TPO, analysis of companies considered comparable by the TPO and the taxpayer was also informed reason for rejection of companies in each case*”.

4.2 The Ld. AO/TPO /Ld. CIT(A) erred on the facts and in law in not appreciating that the Appellant has prepared the TP documentation in accordance with the provisions of section 92D of the Act read with Rule 10D of the Income Tax Rules, 1962 and the Ld. TPO cannot substitute the same with his own methodology without providing any cogent reasons/evidence or back up documentation in support of his contention stated in the order.

4.3 That the Ld. AO/TPO/Ld. CIT(A) has erred on facts and in law in not observing that the Appellant has demonstrated with reliable data available in public domain for adjustment of fixed costs in its operating margin due to under capacity utilization and in the comparables selected by it during the course of Transfer Pricing proceedings.

4.4 The Ld. TPO/Ld. CIT(A) ignored the observation of the erstwhile TPO in the financial year 2009- 10 wherein it was noted that the adjustment for under capacity utilization was permissible to the Appellant.

5. That the Ld.AO/Ld. CIT(A) has grossly erred on facts and in law in making addition of Rs.87,94,251/- treating the moulds to be a capital expenditure/asset vis-a-vis revenue expenditure considered by the Appellant and in specific has made a factual error by observing as under:-

5.1 The Ld CIT(A) erred in holding that the since the Chartered Engineer Certificate is issued after a gap of 4 years, it cannot be a reliable source of evidence;

5.2 The Ld. CIT (A) erred in holding that moulds used for production process are being/ can be used even after the useful life, for quality product has expired without appreciating the nature of production process of the Appellant and the commercial wisdom of Appellant to adopt an accounting policy which is prevalent in the industry and is also in conformity with Accounting Standards and duly certified by an independent Chartered Accountant;

5.3 The Ld. AO/ Ld. CIT(A) has erred on facts and in law in not observing that the Appellant has all the relevant details/documents to

substantiate that the moulds have a life of less than one year and are thus to be considered as revenue expenditure.

6. That on facts and circumstances of the case, the Ld. AO has erred in initiating the penalty proceedings u/s 271(1) (c) of the Act.

7. The above grounds are independent and without prejudice to one another.

8. The Appellant Company craves leave to add, delete, modify or vary any of the grounds of appeal at any time during the pendency of the appeal or at the time of hearing.

10. So far as TP assessment is concerned, the Id. counsel made two-fold arguments i.e., rejection of the comparables selected by the assessee and non-granting of capacity utilization. So far as the rejection of certain comparables and addition of new comparables are concerned, the Id. counsel submitted that the TPO failed to appreciate that there was no warrant in excluding the comparables cited by the assessee who were also engaged in the similar activity in which the assessee is engaged. No reason whatsoever was given by the TPO while excluding the two comparables selected by the assessee i.e., Kusalava International Ltd. and Menon Pistons Ltd. Further, the TPO was also not justified in including two new comparables, namely, Diamond Piston & Rings Ltd. and Rane Automotive Ltd. which are not comparable companies since their capacity data is not available. Without prejudice to the above, he submitted that even if, for the sake of argument, the companies as selected by the TPO are considered, then too, as provided u/s 10B(1)(a)(ii), the TPO had erred by not making adjustment by such price which is to be adjusted on account of differences i.e., capacity utilization which admittedly

is a very substantial factor in profit economics. Referring to annexure 1 and 2 filed along with the synopsis, he submitted that the assessee has calculated the capacity utilization of all those companies and he has no objection if the matter is restored to the file of the A.O./TPO with a direction to grant appropriate capacity adjustment. He also relied on the following decisions to the proposition that capacity utilization adjustment is a must:-

1. Dover India Pvt. Ltd. Vs. DCIT reported in (2017) 81 Taxmann.com 245 (Pune Trib)
2. M/s Nippon Paint India Pvt. Ltd. Vs. ACIT reported in TS-102-ITAT-2017(Chny)
3. E.I. Dupont India Pvt. Ltd. DCIT reported in 16 Taxmann.com 352
4. DCIT Vs. Vertex Customer Services India Pvt. Ltd. reported in (2009) 34 SOT 532 (Del).
5. Global Vantedge Pvt. Ltd. Vs. DCIT reported in (2010) 1 ITR (Tri) 326 (Del)
6. ACIT Vs. MSS India Pvt. Ltd. reported in (2009) 32 SOT 132 (Pune)
7. DCIT Vs. Petro Araldite Pvt.Ltd. reported in (2013) 145 ITD (Mum) 182
8. DCIT vs. Terex India (P) Ltd. (2019) 71 ITR 259 (Delhi ITAT)
9. DCIT vs. Panasonic AVC Networks India Co. Ltd., 63 Sot 121 (Del)
11. The ld. DR, on the other hand, while supporting the order of the CIT(A), submitted that the comparables selected by the TPO were never challenged by the

assessee before the CIT(A). Therefore, the argument of the assessee should not be accepted. He, however, submitted that he has no objection if the matter is restored to the file of the A.O./TPO for consideration of the capacity adjustment subject to submission of details by the assessee to the satisfaction of the A.O./TPO.

12. We have considered the rival arguments made by both the sides, perused the orders of the A.O./TPO/CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the grievance of the assessee in the grounds of appeal relating to TP adjustment is regarding non-consideration of capacity utilization adjustment by the A.O./TPO while comparing the comparable companies. It is the submission of the Id. counsel for the assessee that when its operating at 51.29% of its installed capacity as against 7% in the preceding assessment year and, as such, it could not achieve economics in utilizing fixed costs, therefore, capacity utilization adjustment should be granted to the assessee in the light of the ratio of the decisions relied on by him in the synopsis. We find merit in the arguments advanced by the Id. counsel for the assessee that when it is operating at 51.29% of its installed capacity as against 7% in the preceding assessment year and, as such, it could not achieve economics in utilizing fixed costs, therefore, the assessee should be granted capacity utilization adjustment. However, the same needs verification at the level of A.O./TPO. Considering the totality of the facts and in the interest of justice, we deem it proper to restore the issue to the file of A.O./TPO with a direction to give

an opportunity to the assessee to substantiate with evidence to his satisfaction regarding the capacity utilization adjustment that is necessary for the assessee for this particular assessment year. The A.O./TPO shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee on account of transfer pricing adjustment are accordingly allowed for statistical purposes.

13. So far as disallowance of moulds as revenue expenditure is concerned, the ld. counsel for the assessee submitted that the assessee during the impugned assessment year had incurred an expenditure of Rs.97,36,932/- which has been debited under the head -raw material and spares consumed in its annual accounts. However, in the notes to the accounts it had been reported that during the year the expenditure incurred on moulds have been debited under the head -raw material and spares as against fixed assets in the preceding year. Accordingly, moulds amounting to Rs.97,36,932/- represents expenditure and depreciation debited of Rs.1,23,409/- was reversed. He submitted that the Assessing Officer, in the assessment order, held that the assessee could not substantiate with evidence that the life of moulds was less than one year for which he disallowed the claim made by the assessee which was upheld by the CIT(A). He submitted that the Chartered Engineer's certificate furnished by the assessee to substantiate that the life of mould of cylinder liner does not exceed more than one year was rejected by the CIT(A) on the ground that the certificate was issued after four years from the end

of the financial year and it is not certified whether the item or quality manufactured during the year remained the same. Since the assessee had treated moulds as capital expenditure in the preceding year, he held that the expenditure incurred on moulds are capital expenditure. The ld. counsel for the assessee while challenging the above observation of the CIT(A) submitted that the aforesaid expenditure incurred is the expenditure incurred towards spares and is consumable stores. Since the assessee is a manufacturer of cylinder liners which are supplied by them to Maruti Suzuki and Honda Motors and these containers are made of alloys i.e., zink, iron and ore, therefore, on account of their uses depending upon the size and item, the life of such moulds invariably is for a period of less than one year. Referring to the orders for assessment years 2013-14 to 2018-19, he submitted that such expenditure for the moulds has always been considered as revenue expenditure. Relying on the following decisions, he submitted that the expenditure incurred on moulds is revenue expenditure:-

- (i) CIT vs. Petro Araldite (P.) Ltd reported in [2018] 256 Taxman 16 (Bombay)
- (ii) ADCIT vs. Terex India (P.) Ltd reported in [2019] 71 ITR(T) 259 (Delhi - Trib.)
- (iii) DCIT vs. Panasonic AVC Networks India Co. Ltd. [2014] 63 SOT 121 (Delhi - Trib.)(URO)
- (iv) Assistant Commissioner of Income-tax vs. Skoda Auto India (P.) Ltd reported in [2019] 107 taxmann.com 423 (Pune - Trib.)
- (v) CIT vs. Tupperware India (Pvt.) Ltd. [2015] 53 Taxmann.com 232 (Delhi)

- (vi) CIT vs. Malerkotls Steels & Alloys (P) Ltd. [2011] 336 ITR 49 (P&H)
- (vii) CIT vs. Aditya Ferro Alloys (P) Ltd. [2014] 36 ITR 490 (Madras)
- (viii) CIT vs. Jagatjit Industries Ltd. [2000] 241 ITR 556 (Delhi)
- (ix) CIT vs. Super Cassettes Industries Ltd. in ITA NO. 171/2010 dated. 17.10.2011 (Del)
- (x) CIT vs. Sunbeam Auto Ltd. [2018] 89 taxmann.com 191(Delhi)
- (xi) Empire Jute Co. Ltd. vs. CIT reported in 124 ITR 1(SC)

14. The ld. DR, on the other hand, has heavily relied on the orders of the AO and CIT(A)

15. We have considered rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO in the instant case has considered the expenditure of Rs.97,36,932/- on account of moulds as capital in nature and allowed depreciation on the same as against revenue expenditure treated by the assessee. We find although the assessee filed a certificate from the Chartered Engineer to the effect that the life of moulds of cylinder liners does not exceed more than one year, the ld.CIT(A) rejected the same and upheld the action of the AO the reasons for which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel that the assessee being the manufacturer of moulded automobile products, therefore, mould is a basic material. Such mould has been purchased and utilised in the

process of production which has a very short life and needs to be replaced from time to time and, therefore, should be treated as revenue in nature. It is also his submission that the expenditure on mould is of recurring nature and, therefore, merely because it has some enduring benefit to the assessee, the same cannot be considered as capital in nature especially when the life of mould is less than one year and has to be replaced frequently.

16. We find merit in the above argument of the Id. Counsel. We find the Honøble Supreme Court in the case of *Empire Jute Company Ltd. Vs. CIT reported in 124 ITR 1*, at para 11.6 has observed as under:-

øThere may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the Assesseeø trading operations or enabling the management and conduct of the Assesseeø business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. But even if this test were applied in the present case, it does not yield a conclusion in favour of the revenue. Here, by purchase of loom hours no new asset has been created. There is no addition to or expansion of the profit-making apparatus of the assessee. The income-earning machine remains hat it was prior to the purchase of loom hours. The assessee is merely enabled to operate the profit making structure for a longer number of hours. And this ad arnage is clearly not of an enduring nature. It is limited in its_a_ra:i:n to six months and, moreover, the additional working :_rs per week transferred to the assessee have to be utilised during the week and cannot be carried forward to the next week. It is, therefore, not possible to say that any advantage of enduring benefit in the capital field was acquired by the assessee

in purchasing loom hours and the test of enduring benefit cannot help the revenue.ö

17. We find, the Honøble Delhi High Court in the case of *CIT vs. Sunbeam Auto Ltd.*, 89 taxmann.com 191 (Del) has held that expenditure on replacing of moulds and dies which are subjected to heavy wear and tear is allowable as revenue expenditure. The relevant observations of the Honøble High court at para 6 reads as under:-

ö6. We do not think that any substantial question of law on this aspect/issue arises from the decision of the Tribunal. It has been factually found and that too concurrently by the CIT (Appeals) and the Tribunal that the purchase of dies and moulds did not bring into existence any permanent or enduring advantage to the assessee. It has been found that due to continuous use they wear out fast and further any minor defect in the mould on account of continuous use such as chipping or cracking would render them useless. In any case the longevity of the moulds and dies is not substantial as held by the Tribunal and they have to be replaced frequently to ensure quality of the product. Moreover, the moulds have to be produced to suit the requirements of the particular customer and after the order is met, they become useless and ultimately have to be destroyed to prevent misuse or manufacture of fakes. It has also been found by the appellate authorities that the expenditure on replacement of dies and moulds was earlier allowed by the income tax authorities as revenue expenditure. These are factual findings recorded by the Tribunal which are not disputed before us by the revenue on the basis of any evidence or material. It is well settled that any expenditure on replacement or repairs to plant and machinery which does not bring into existence any enduring or permanent advantage in the capital field is allowable as revenue expenditure. The Tribunal has only applied this settled legal position to the undisputed facts found. Therefore no substantial question of law arises for our consideration. The appeals on this point are accordingly dismissed.ö

18. The Honøble Delhi High Court in the case of *CIT vs. Jagtjit Industries Ltd.* (*supra*) has upheld the decision of the Tribunal holding that the expenditure incurred on replacing of the moulds is revenue in nature. The Honøble High Court,

following the decision of the Honøble Supreme Court in the case of Empire Jute Company (supra) has observed as under:-

õ4. Whether on given set of facts, replacement of certain items, forming an integral or important part of the machinery would be revenue expenditure or capital expenditure is primarily a question of fact, to be decided in the context of the business carried on by an assessee. Merely, because the benefit accruing by the expenditure is of enduring nature, is by itself not a conclusive test to hold it as a capital expenditure (see [Empire Jute Co. Ltd. v. CIT](#)). Normally initial investment on machines and their parts will be in the nature of capital expenditure but replacement of parts of an existing machinery in the course of their working will be a revenue expenditure.

5. In the instant case having regard to the nature of the business of the assessee and applying the principle of law enunciated in Mysore Spun Concrete Pipe Pvt. Ltd.'s case [1992] 194 ITR 159 (Kar), the Tribunal has reached a conclusion that the moulds in question do not enhance the capacity of the existing machines and are mere replacements for the moulds damaged during the process of manufacture of glass. It is also evident from the format of the question proposed by the Revenue, that the finding of the Tribunal to the effect that the expenditure in question was incurred by the assessee on the "replacement" of the moulds is not under challenge.

6. In view of the afore noted finding recorded by the Tribunal, to which no challenge is laid, we do not find any infirmity in its order declining to refer the proposed question.

7. There is no merit in the petition and the same is accordingly dismissed.ö

19. The various other decisions relied on by the Ld. Counsel for the assessee also support his case to the proposition that expenditure incurred on moulds is revenue in nature. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to treat the expenditure on moulds as revenue expenditure. The grounds raised by the assessee on this issue are accordingly allowed.

20. The ground of appeal No.6 being premature at this juncture is dismissed. The grounds No.7 and 8 being general in nature are dismissed.

21. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 13.12.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 13th December, 2019

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi