

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA  
[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member &  
Smt. Madhumita Roy, Hon'ble Judicial Member]**

**[Through Virtual Court]**

**ITA No. 464/Kol/2019  
Assessment Year: 2012-13**

**ITO, Ward – 1(2), Kolkata.....Appellant**  
**P-7, Chowringhee Square,**  
**R. No. 18, 4<sup>th</sup> Floor,**  
**Kolkata – 700 069.**

**M/s. SKJ Coke Industries Ltd.....Respondent**  
**1/1A, Biplabi Ankul Chandra Street,**  
**5F, Electronic Centre (Princep Stret),**  
**Kolkata – 700 072.**

**Appearances by:**

*Shri Supriyo Pal, JCIT appearing on behalf of the Revenue*

*Shri Bisweswar Ghosh, AR appearing on behalf of the Assessee*

Date of concluding the hearing : August 10, 2020

Date of pronouncing the order : August 14 , 2020

**ORDER**

**PER MADHUMITA ROY, JM**

The instant appeal at the instance of the Revenue is directed against the order dated 19.12.2018 passed by the Ld. CIT(A)- 1, Kolkata, arising out of the order dated 23.03.2015 passed by the Ld. DCIT, Circle -1(2), Kolkata, ITNS-51 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2012-13 with the following grounds:

*"1. That on facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing payment of consultancy charge amounting to Rs. 2,60,300/- contradicting the A.O.'s stand on capital expenditure and allowing it as revenue expenditure.*

*2. That on the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on repair of machinery of Rs. 42,40,472/-*

*contradicting the A.O's stand on capital expenditure and allowing it as revenue expenditure.*

*3. That on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in allowing relief on disallowance of Rs. 1,44,399,109/- u/s 14A r.w.Rule 8D(iii) of the I. T. Act, 1961 while not considering the CBDT's Circular No. 5/2014 dated 11/02/2014 in its proper perspective and spirit.*

*4. The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.*

### **Ground No. 1**

3. This ground relates to addition on consultancy charges amounting to Rs. 2,60,300/-. During the course of assessment proceedings, it was found that the assessee paid consultancy charges for interior designing, drawing etc. for renovation of office premises. Such expenses though claimed as revenue, the Ld. Assessing Officer considered the same as capital expenditure. According to him, the current repairs connote expenditure for the purpose of preserving or maintaining an already existing assets and not for renewal or restoration. Further that the said expenditure gives a new or different advantage and hence it is not repairs but a capital expenditure. He, therefore, added the same to the total income of the assessee. In appeal, the same was reversed by the Ld. CIT(A).

4. The case of the assessee before us is this that such an expenditure is revenue in nature. The Ld. AR at the time of hearing to the matter relied upon the decision passed by the Special Bench of

Tribunal, Mumbai in the matter of DCIT vs Kalyanpur Cement Ltd. passed by the Coordinate Bench. On the other hand, the Ld. DR relied upon the order passed by the Ld. AO.

5. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record including the order passed by the Ld. CIT(A). It appears that the Ld. CIT(A) considered such consultancy charges for interior designing, drawing etc for renovation of office premises as revenue in nature, particularly, rely upon the judgement passed by the Special Bench in the matter of JCIT vs Mukund Ltd. reported in (2007) 291 ITR (AT) 249 (Mumbai) (SB) and also sub-section (1A) of section 32. It is a fact that such repair has no enduring benefit, which has neither brought into existence nor obtained a new or different advantage and as such the same is nothing but current repairs as already decided in an identical matter in the case of DCIT vs Kalyanpur Cement Ltd. as relied upon the Ld. AR. Therefore, such consultancy charges for the interior designing, drawing etc. for renovation of office premises has been rightly dealt with by the Ld. CIT(A), in our considered opinion, without any ambiguity so as to warrant any interference. The order is, thus, passed in the affirmative i.e. in favour of the assessee and against Revenue. This ground of appeal preferred by the Revenue is dismissed.

### **Ground No. 2**

6. This ground relates to deletion of addition on repair of machinery to the tune of Rs. 42,40,472/-. During the course of

assessment proceedings, it was found that the assessee incurred expenditure to the tune of Rs. 42,40,472/- for repair of coke oven. The same was not considered as current repairs and added to the total income of the assessee considering it capital in nature. In appeal, the Ld. CIT(A) deleted such addition, hence Revenue is before us.

7. At the time of hearing of the instant appeal, the Learned Counsel for the assessee submitted before us that such repair has no enduring benefit and neither different advantage is being obtained upon repairing of the same and, therefore, it is a current repair and allowable expenses. He, further, relied upon the judgement passed by the Coordinate Bench in the matter of DCIT vs Kalyanpur Cement Ltd. (supra). On the other hand, the Ld. DR relied upon the order passed by the Ld. AO. He, further, submitted that since the assessee has not furnished a copy of bills of the said expenses to examine the nature of expenses, the Ld. AO decided the issue against the assessee.

8. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record including the order passed by the Ld. CIT(A). It appears from the records that on the basis of this statement made by the assessee that the oven are plant & machinery and due to continuous burning. These ovens are damaged which are repaired at an interval of 3 to 4 years, the Ld. Assessing Officer formed an opinion that the assessee-company replaced the oven by new one in the absence of any corroborative evidences submitted by the assessee so as to decide the same otherwise. According to him, current repairs connote an

expenditure for the purpose of preserving or maintaining an already existing asset and not for renewal or restoration. Since the expenditure gives a new and different advantage, the same cannot be said to be a capital expenditure and thus disallowed.

It appears from the record that some expenditure is though big such repair has no enduring benefit neither any different advantage is being provided to the assessee by such repairing works. Hence, relying upon the ratio laid down by the Coordinate Bench in the matter of DCIT- vs.- Kalyanpur Cement Ltd., we find no ambiguity in the matter passed by the Ld. CIT(A) in deciding the said expenditure as capital in nature so as to warrant inference. Hence, this appeal is found to be devoid of any merit and thus dismissed.

### **Ground No. 3**

9. This ground relates to deletion of addition of Rs. 1,44,39,109/- u/s 14A read with Rule 8D(3) of the Act. At the very outset of the proceeding, the Learned Counsel appearing for the assessee submitted before us that no exempt income was earned by the assessee during the year under consideration, the assessee did not claim any exempt income as apparent from the return of income and, therefore, the question of disallowance does not arise. On the other hand, the Ld. DR relied upon the order passed by the Assessing Officer. According to him, relying upon the CBDT Circular No. 5/2014 dated 11.02.2014, the Ld. AO rightly calculated the administrative expenditure u/s 14A read with Rule 8D(3) of the Act.

10. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record including the order passed by the Ld. CIT(A). The Ld. AO while making the addition observed that no expenditure to maintain the port folio has been offered for disallowance in the return and thus relying upon the judgement passed by the Chennai Bench of Tribunal and the CBDT Circular No. 5/2014 made addition against the assessee. But it appears from the record that the expenditure made by the assessee during the year was out of reserve and surplus. Moreso, the assessee has not earned any exempt income in the year under consideration. However, it further appears from the order impugned before us that the Ld. CIT(A) distinguished the matter from the judgement passed by the Chennai Bench of Tribunal in the case of SPIC has relied upon by the Ld. CIT(A). More so, the CBDT Circular is not having any binding effect on the appellate order or ITO as also observed by the Ld. Assessing Officer. It is relevant to maintain that the fact that the assessee has invested the amount in shares of another private company from its own resources and not from any borrowed funds was also considered by the Ld. CIT(A) while deleting the addition made u/s 14A of the Act. In our considered opinion, since there is no exempt income earned by the assessee during the year under consideration and particularly when the investment in shares of another company was made by the assessee from its own fund, the question of disallowance u/s 14A does not and cannot arise. We, therefore, find no infirmity in the order passed by the Ld. CIT(A) and deleting the said addition made by the Ld. AO. Hence the ground of

appeal preferred by the Revenue is found to be devoid of any merit and thus dismissed.

**11. In the result, the appeal preferred by the Revenue is dismissed.**

Order Pronounced in the Open Court on 14<sup>th</sup> August, 2020.

Sd/-  
(J. Sudhakar Reddy)  
ACCOUNTANT MEMBER

Sd/-  
(Madhumita Roy)  
JUDICIAL MEMBER

**Dated: 14 /08/2020**

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. SKJ Coke Industries Ltd., 1/1A, Biplabi Ankul Chandra Street, 5F, Electronic Centre (Princep Street), Kolkata – 700 069.
2. ITO, Ward – 1(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT, Kolkata