

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4746/M/2018  
Assessment Year: 2011-12**

Sri Padmanabh Parmeshwar Karle, C/o M/s. Gem Synthetics & Polymer (India), C-10A, Ghatkopar, Indl. Estate, Ghatkopar (W), Mumbai - 400086 <b>PAN: AFQPK9566G</b>	Vs.	Dy.CIT 22(1), 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Stn Complex, Vashi, Navi Mumbai - 400703
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Narayan Atal, A.R.  
Revenue by : Ms. Shreekala Pardeshi, D.R.

Date of Hearing : 03.11.2020

Date of Pronouncement : 14.12.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 02.05.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The only issue raised by the assessee in three grounds of appeal is against the confirmation of addition of Rs.9,78,685/- by the Ld. CIT(A) as made by the AO out of total expenditure of Rs.17,26,947/- incurred by the assessee on current repairs and maintenance of plant and machinery and factory & building by

treating the same as capital nature with enduring benefits over the years.

3. During the course of assessment proceedings, the AO noticed that assessee has charged under the head repairs and maintenance expenditure of the nature of purchase of MS sheets, channels, plates, beam and angles amounting to Rs.6,07,098/- incurred for repairing of roof at Pali factory. Similarly, the repairs of building amounting to Rs.3,71,587/- which represented the purchase of cement, sand, land leveling and foundation work for roof at the said factory. The AO issued show cause notice to the assessee as to why the same should not be treated as capital expenditure as the expenditure was incurred for creating an asset having enduring benefits over the years which was replied by the assessee by submitting that the factory to which the said repairs were carried out was more than 40 years old and there was urgent need of repairs and hence the said expenditure was incurred. The AO, after considering and rejecting the submissions of the assessee, came to conclusion that the expenditure has resulted in some new permanent structure that result in enduring benefits to the assessee spanning over a number of years and therefore held that said expenditure of capital in nature. Consequently, Rs.9,78,685/- was treated as capital expenditure and depreciation @ 5% was allowed which worked out to Rs.48,934/-. With the allowance of depreciation, the net disallowance worked out to Rs.9,29,751/- which was added to the income of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the action of the AO by observing that the repairs has brought into existence new asset which will provide the benefit of enduring nature by observing and holding as under:

“In the instant case, the factory building is not the assessee's stock in trade but a very old factory building stated to be 40 years old by the appellant wherein very extensive repairs have been carried out and the entire roof has been made afresh. Making of new roof of the factory building is not an expenditure which can be considered to be recurring in nature. The earlier roof by appellant's own submission had lasted 40 years and it was M. S. Structure which was in a corroded state and thus the new roof made by the appellant during the year is also likely to give the appellant benefit of similar enduring nature and last for something like another 40 years. Under the circumstances, the repair has brought into existence a new asset which will provide benefit of enduring nature just the way the original roof had provided. For an expenditure to be considered capital in nature, it is not important that a new independent asset should come into existence. If the repairs are of extensive nature which render the structure a permanence and bring benefit of enduring nature, it would be sufficient ground to hold that expenditure is capital in nature. The facts of the appellant's case are quite different from the facts of the case laws relied upon the appellant and those decisions having been rendered in different facts do not help the case of the appellant.

5.1.4 In view of the above discussion and the binding precedent, I am of the view that the AO was justified in the facts of the case in treating the amount of Rs. 9,29,751/- as capital expenditure, thereby allowing depreciation as per law as a new asset giving benefit of enduring nature has come into existence. Hence, the addition made by the AO is confirmed. 1

Thus, the ground of appeal No. 1 is Dismissed.

5.2 Ground of appeal No. 2 is general in nature. Hence, not adjudicated.

6. In the result, the appeal is Dismissed.”

5. After hearing both the parties and perusing the material on record, we observe that the factory building which was subjected to repairs was more than 40 years old and the expenditure comprised of materials and labour etc. which according to the assessee was incurred for carrying out the repairs which were of urgent capture as the roof has totally corroded due to rusting making it difficult to run the factory. The assessee has stated before the authorities below that with the incurring of said expenditure, no new asset was created, but

only old asset was repaired which was taken on lease basis and is not even owned by the assessee even.

6. After considering the facts in totality, we are of the view that the repairs is carried out by the assessee to the existing structure which is taken on lease and is of revenue or current nature and not of capital in nature. We would like to mention that the enduring benefit is not criteria for treating the expenditure as capital in nature and it has to be proved by the revenue authorities that new asset is created. In the present case, we note that the expenditure was incurred to repair the old leased building the roof whereof was rusted due to aging. Therefore, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 14.12.2020.**

**Sd/-  
(Mahavir Singh)  
VICE PRESIDENT**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 14.12.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.