

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.315/Del./2017
(Assessment Year : 2013-15)**

**ITA No.6933/Del./2017
(Assessment Year : 2014-15)**

M/s. Bharat Gears Limited,
1009, Surya Kiran Building,
19, K.G. Marg,
New Delhi.

vs. ACIT, Central Circle 6,
New Delhi.

(PAN : AAACB4860G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri M.K. Madan, CA
REVENUE BY : Shri Om Prakash, Senior DR

Date of Hearing : 28.10.2021

Date of Order : 25.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Bharat Gears Limited (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside

the impugned orders dated 26.12.2016 & 25.10.2017 passed by the Commissioner of Income - tax (Appeals)-24, New Delhi qua the Assessment Years 2013-14 & 2014-15 respectively on the grounds inter alia that :-

“ITA NO.315/DEL/2017 (AY 2013-14)

1. That the order passed by the Id. CIT (A)-24 is bad in law & on facts.
2. That the Id. CIT (A) has erred in confirming the disallowance of repair of Rs.23,62,833/- by holding the same as capital expenditure.
3. That the Id. CIT (A) has erred in confirming disallowance of Rs.32,95,425/- on account of leave encashment u/s 43B of the Income Tax Act, 1961.”

“ITA NO.6933/DEL/2017 (AY 2014-15)

1. That the order passed by the Id. CIT (A)-24 is bad in law & on facts.
2. That the Id. CIT (A) has erred in confirming disallowance of Rs.58,41,637/- on account of leave encashment u/s 43B of the Income Tax Act, 1961.”

**GROUND NO.1 OF
AYs 2013-14 & 2014-15**

3. Ground No.1 of Assessment Years 2013-14 & 2014-15 are general in nature, hence need no adjudication.

**GROUND NO.3 OF AY 2013-14
GROUND NO.2 OF AY 2014-15**

4. Ground No.3 of Assessment Year 2013-14 and Ground No.2 of Assessment Year 2014-15 are not pressed at the time of hearing, hence dismissed as not pressed.

GROUND NO.2 OF AY 2013-14

5. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of manufacturing of Automotive Gears, Gear Boxes, Industrial furnaces and other automobile components. Assessing Officer (AO) called upon the assessee to explain as to why the expenditure on account of reconditioning of plant and machinery be not disallowed being enduring in nature. Declining the contentions raised by the assessee that expenditure incurred is to restore the operational efficiency of the machine and as such is of revenue in nature, AO by relying upon the decision rendered by Hon'ble jurisdictional High Court in assessee's own case for AY 1994-95 against the assessee treated the expenditure of Rs.36,35,125/- as capital in nature rather granted depreciation on the same and thereby made addition of Rs.23,62,833/-.

6. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has confirmed the addition by way of dismissing the appeals. Feeling aggrieved by the orders passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, assessee company has claimed expenditure to the tune of Rs.36,35,125/- on account of reconditioning of plant and machinery i.e. CNC Control Panel with manufacturing supply and fitment of 3 Axes CNC kit on WMW Grinder Machine, spare parts mounted on the machine and CNC retrofitting three axes and reconditioning of WMW internal Bore Grinder as revenue expenditure. It is also not in dispute that the AO has not found any fault with the details and explanation furnished by the assessee company qua reconditioning/repair of plant and machinery but disallowed the same by following the order passed by the Hon'ble High Court in assessee's own case for AY 1994-95. It is also not in dispute that similar disallowance made in AY 1995-96 onwards even in AY 2012-13 has been deleted by the ld. CIT (A). It is also not in dispute that coordinate Bench of the Tribunal in assessee's own case in AYs 1995-96 to 1999-00 has distinguished the facts of the case from the facts pertaining to disallowance of AY 1994-95.

9. In the backdrop of the aforesaid undisputed facts and circumstances, the sole question arises for determination in this case is :-

“as to whether Id. CIT (A) has erred in treating the revenue expenditure of Rs.36,35,125/- as claimed by the assessee company for reconditioning/repair of plant and machinery as capital expenditure?”

10. Ld. AR for the assessee challenging the impugned order passed by the Id. CIT (A) contended inter alia that when the machinery viz. WWW INI Bore Grinder, WMW INI 77501, etc. got defected it needs repair and by getting the same repaired no new asset created and has placed on record production chart available at page 9, inspection and investment proposal note dated 02.03.2010 highlighting the problem of “size variation”, said proposal of repair was prepared by unit head and approved plan available at page 23a and 23b of the paper book and he has also filed purchase order available at page 10 & 11 of the paper book by placing on file POS detailing sharpline scope of work available at pages 16 to 22 of the paper book; that as per production report initially, efforts were made to rectify the defects but when it failed, proposal was put up by the Unit Head suggesting overhauling of the machinery for which note was prepared in March, 2010; that machinery remained in operating state till March 2010 and

thereafter order was placed to Sharpline Automation for supply of CNC Control Panel and to do various jobs and total amount spent was Rs.36,35,125/-; that approval for reconditioning as against purchase of new machines and copy of quotes of 2011 of similar machine of "Euro equivalent" for Rs.2.98 crores are also made available on record at pages 27 to 41 of the paper book; that decision rendered by the Tribunal and confirmed by Hon'ble High Court in assessee's own case for AY 1994-95 is not applicable to the facts and circumstances of the case because machine during the year under consideration remained in operating state till April 2010 whereas in 1994-95 machine was lying idle.

11. To further support his arguments, Id. AR for the assessee relied upon the decision of the **coordinate Bench of the Tribunal in its own case for Assessment Years 1995-96 to 1999-00 order dated 21.07.2006**, copy available at pages 12 to 26 of the paper book. Ld. AR for the assessee also relied upon the judgment rendered by **Hon'ble Madras High Court in case of Neyelli Lignite Corporation Ltd. 388 ITR 172.**

12. However, on the other hand, to repel the arguments addressed by the Id. AR for the assessee, Id. DR for the Revenue vehemently relied upon the Tribunal order passed in assessee's own case in AY 1994-95 confirmed by Hon'ble High Court and

further contended that by overhauling the machine, new assets have been created.

13. Assessee has brought on record documents to support its arguments, which are as under :-

- (i) Detail of reconditioning of plant & machinery of Rs.36,35,125/-;
- (ii) Copy of bill dated 25.06.2012 of Sharpline Automation (P) Ltd. of CNC Control Panel of Rs.29,95,000/-;
- (iii) Copy of Bill dated 25.06.2012 of Sharpline Automation (P) Ltd. for spare parts mounted on the machine of Rs.2,35,125/-;
- (iv) Copy of bill dated 11.07.2012 of Sharpline Automation (P) Ltd. for CNC Retrofitting Three Axes and Reconditioning of WMW Internal Bore Grinder of Rs.4,05,000/-;
- (v) Copy of letter dated 03.10.2016 to CIT (A) along with letter to DCIT in the assessment proceedings;
- (vi) Copy of production chart of WMW Grinder Machine – Machine Utilization Report;
- (vii) Copy of purchase order dated 19.05.2010 regarding CNC Retrofitting Three Axes and Reconditioning of WMW Bore Grinder;
- (viii) Copy of purchase order dated 20.05.2010 & 25.06.2010 for manufacturing, supply & fitment of 3 axes CNC Kit on WMW Grinder Machine;
- (ix) Copy of Commissioning Report dated 27.07.2012;
- (xii) Annexure for PO dated 19.05.2010 & 20.05.2010;
- (xiii) Copy of capital investment proposal note dated 02.03.2010; and
- (xiv) Quotation for purchase of new machine.

14. We have duly perused aforesaid documents viz. production chart, available at page 9 of the paper book, capacity proposal note dated 02.03.2010, highlighting the problem of “size variation”

available at pages 23a & 23b of the paper book, quotation for purchase of new machine available at pages 27 to 41. All these facts go to prove inter alia that from the production chart available at page 9, it is proved that machine was not operating state in April, 2010; that from the inspection and investment proposal note dated 02.03.2010 available at pages 23a and 23b, it is proved that there was a problem of “size variation” affecting the repair of the machine; that from the internal production report regarding WMB Internal Grinding machine which was giving problem due to size variation, proposal for overhauling the machine was put up and on the basis of which order was placed with Sharpline Automation for supply of CNC Control panel and to do various jobs at the cost of Rs.36,35,125/- whereas for purchase of new similar machine of Euro equivalent was costing Rs.2.98 crores as per quotations available at pages 27 to 41 of the paper book; that it was a business decision of the assessee that overhauling old machine for Rs.36,35,125/- as against cost of new machine of Rs.2.98 crores is a prudent business decision.

15. Identical issue has been decided by the **coordinate Bench of the Tribunal in assessee’s own case for AYs 1995-96 to 1999-00** (supra) by distinguishing the earlier order passed by the coordinate

Bench of the Tribunal for AY 1994-95 which was confirmed by Hon'ble Delhi High Court by returning following findings :-

“35. We find that the facts in the present years are distinguishable from the facts that were before the Tribunal in the assessment year 1994-95. In that year the assessee repaired the machinery which were completely broken down and lying unutilized since the year ending on 31-3-92. The same were renewed in the assessment year 1994-95 relevant to the year ending on 31-3-94. In these circumstances, the Tribunal held that the machine had become unfit for production and by subsequent reconditioning carried out resulted in imparting useful life to an old and unfit machine. Thus resulting in a benefit of enduring nature. In the years under appeal, we find that no material has been brought on record by the Revenue to show that even in a single case that the machines were broken down and lying idle from an earlier period, which were put to repairs during the years under consideration. The ld. Counsel for the assessee submitted that the accuracy of the machinery had gone down and, therefore, the machine required repair. Thus the decision of the assessment year 1994-95 cannot be applied to the present years under appeal. In the above facts and circumstances of the case, we are of the considered opinion that current repairs denotes repairs which are attended to when the need for them arises from the buainessman's viewpoint and which are not allowed to fall into arrears or to be accumulated. The amount or time involved in the repairs is not a relevant factor while deciding whether the repairs qualify as current repairs. The expression "repairs" presupposes certain injury or partial destruction. Repair is restoration for renewal or replacement of subsidiary parts wholly or partly. Ordinarily, the insertion in a machine of new parts for old and worn out parts is in the nature of current repairs or revenue expenditure, even if the old parts are required to be replaced after a long time. The mere fact that the repairs result in all improvement is not enough to take the repairs out of the category of current repairs. The old principle invoking the test of improvement has to be applied with discernment in the present age when the march of technology and the unending fabrication of new materials and products make even current repairs, primarily, so called yield improvement in varying degrees. Therefore, we are of the view that the expenditure incurred by the assessee on repairs of machinery in the present years under appeal is a revenue expenditure allowable for deduction to the assessee. We, therefore, in view of the facts of the case in each of the assessment year under consideration, confirm the orders of the CIT (A) and dismiss the ground of appeal of the Revenue for each of the five assessment years under consideration.

16. Identical issue has been decided in assessee's own case in AY 2012-13 by the ld. CIT (A) vide order dated 23.06.2016 as revenue expenses by distinguishing the facts with that of

Assessment Year 1994-95 in assessee's own case and thereby deleted the addition made by the AO.

17. We have perused the order passed by the Hon'ble Madras High Court in the case of **Hon'ble Madras High Court in case of Neyelli Lignite Corporation Ltd.** (supra) wherein the identical issue has been decided as to whether expenditure incurred on charging parts of the machinery would treat as capital expenditure or revenue expenditure. Operative part of the order is as under:-

“so long as the assessee has not replaced the entire boiler and bucket wheel excavator and what were replaced was only parts of the boiler, the expenditure towards it was only to preserve and maintain the existing asset without any enduring advantage.”

18. In view of what has been discussed above and by following the order passed by the **coordinate Bench of the Tribunal in assessee's own case for AYs 1995-96 to 1999-00** and following the decision rendered by **Hon'ble Madras High Court in case of Neyelli Lignite Corporation Ltd.** (supra), we are of the considered view that it was a case of merely overhauling machine by replacing its old parts as it was having problem due to size variation.

19. In the light of above discussion, we are of the considered view that overhauling the old machine at less than of 1/6th of its price as a new unit i.e. for Rs.36,35,125/- as against new unit for

Rs.2.98 crores is a prudent business decision and by overhauling the old machinery, no new asset has been created and as such, these are to be treated as revenue expenses. Moreover, so long as only part of the machinery has been replaced as in the instant case to preserve and operate the existing machinery/assets without any enduring advantage, it would be treated as revenue expenditure. So, we are of the considered view that expenditure incurred by the assessee for reconditioning of plant and machinery to the tune of Rs.36,35,125/- are to be treated as revenue expenditure, hence ground no.3 of AY 2013-14 is determined in favour of the assessee.

20. Resultantly, the appeal filed by the assessee for Assessment Year 2013-14 is partly allowed and the appeal for AY 2014-15 is dismissed having been not pressed.

Order pronounced in open court on this 25th day of November, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of November, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-24 New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.