

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.7100/Del/2018
(ASSESSMENT YEAR 2012-13)**

M/s TPR Autoparts Mfg India Private Limited, E-10, 1 st & 2 nd Floor, Main Market, Hauz Khas, New Delhi-110 016 PAN-AACCT 9433D (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-25(1), New Delhi-110 002 (Respondent)
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Appellant by	Sh. C.S. Agarwal, Sr. Counsel and Sh. R.P. Mall, Adv.
Respondent by	Sh. H.K.Chaudhary, CIT-DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi ["Ld. CIT(A)", for short], dated 27.08.2018 for Assessment Year 2012-13. The only issue in dispute in the present appeal is regarding the addition of Rs.45,19,447/- in assessment order dated 23.03.2016 passed u/s 143(3) of the Income Tax Act, 1961. The assessee claimed an

amount of Rs.50,21,607/- on account of moulds expenses, as revenue expenditure. The Assessing Officer treated this expenditure of Rs.50,21,607/- as capital expenditure. However, the Assessing Officer allowed depreciation amounting to Rs.5,02,160/- and the balance amount of Rs.45,19,447/- (i.e., Rs.50,21,607/- minus Rs.5,02,160/-) was disallowed. Vide impugned appellate order dated 27.08.2018, the Ld. Commissioner of Income Tax (Appeals) ("Ld. CIT(A)" for short) confirmed this addition. This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 27.08.2018 passed by the Ld. CIT(A).

(B) A perusal of the aforesaid impugned appellate order dated 27.08.2018 of the Ld. CIT(A) shows that he followed the order dated 27.12.2016 for the Assessment Year 2011-12 passed by the Ld. CIT(A) in the assessee's own case on similar facts and circumstances. In the course of the appellate proceedings in the Income Tax Appellate Tribunal ("ITAT", for short) a brief synopsis was filed from the assessee's side; relevant portion of which is reproduced below for ease of reference:

"1. The appellant company is a wholly 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 'moulded' automobile products i.e. piston rings, cylinder liners, valve seat rings and other automotive parts. It is the fourth year of its existence, though effectively it is the third year of production after its set up and commencement of business in the FY 2009-10.

2. The aforesaid appeal pertains to AY 2012-13 and the only issue involved is in respect of the disallowance of claim of an expenditure incurred of Rs. 45,19,447/- which represented an expenditure incurred on moulds and are used for the manufacture of cylinder liners.

3. The learned AO by his order dated 23.03.2016 in para 4 has dealt with the claim when he held such an expenditure incurred represents capital expenditure and does not represent revenue expenditure, held in para 4.3 as under:

“the claim of moulds of Rs. 50,21,607/- is hereby disallowed subject to admissible depreciation claim as per I.T. Act, 1962. The depreciation claim as per details of addition of mould comes to Rs.5,02,160/-. Therefore the balance claim of Rs.45,19,447/- is being disallowed and added back to the income of the assessee.”

4. On appeal the learned CIT(A) 'confirmed' the disallowance for the reasons stated by him in para 52 wherein he held that on similar facts and circumstances the claim made by the assessee had not been accepted in the AY 2011-12 and as such the disallowance made had been sustained by him.

5. The appellant submits that the learned Tribunal by its order dated 13.12.2019 in ITA No. 4744/Del/2017 for the AY 2011-12 has accepted the claim as is evident from its order wherein in para 19 it had recorded its finding and held that the expenditure incurred on moulds is revenue in nature. In view thereof it is prayed that the orders of learned AO and of learned CIT(A) be set aside and the learned AO be directed to allow the claim of expenditure incurred on moulds as revenue expenditure. The disallowance thus made by the learned AO of Rs. 45,19,447/- be allowed. It is clarified that the expenditure incurred aggregated to Rs. 50,21,607/-. However the learned AO had allowed a sum of Rs. 5,02,160/- as depreciation. Hence the amount to be allowed as deduction aggregates to Rs. 45,19,447/-.

6. Order of Appellate Tribunal for the AY 2011-12 in ITA No.4744/Del/2017 is also annexed.”

(B.1) A copy of order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi in assessee's own case for Assessment Year 2011-12 in ITA No.4744/Del/2017 was also filed from the assessee's side in the course of appellate proceedings in Income Tax Appellate Tribunal.

(B.1.1) At the time of hearing before us, the Ld. Senior Counsel for the assessee submitted that the issue in dispute is squarely covered in favour of the assessee by the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi. He also placed reliance on the aforesaid brief synopsis; relevant portion of which has already been reproduced in the preceding paragraph No.(B); besides placing reliance on the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi.

(B.1.2) The Ld. Commissioner of Income Tax, Departmental Representative ("Ld. CIT-DR" for short) agreed that the issue in dispute in the present appeal, regarding the aforesaid addition of Rs.45,19,447/-, is covered in favour of the assessee by the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi. However, he relied on the orders of the Assessing Officer and the Ld. CIT(A).

(B.2) We have heard both sides and perused the materials on record. We find from the perusal of the aforesaid impugned appellate order dated 27.08.2018 of the Ld. CIT(A) that he dismissed assessee's appeal on this issue and confirmed the addition of Rs.45,19,447/- by following the decision of Ld. CIT(A) on similar grounds for Assessment Year 2011-12 in assessee's own case. He further observed that the facts and circumstances on this issue for Assessment Year 2012-13 (to which this appeal pertains) were similar to facts and circumstances for Assessment Year 2011-12. We further find that vide aforesaid order dated 13.12.2019 for Assessment Year 2011-12, in assessee's own case, Co-ordinate Bench of ITAT, Delhi; has already decided this issue in favour of the assessee. The relevant portion of the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi, passed in assessee's own case for Assessment Year 2011-12, is reproduced as under for ease of reference:

"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 ld. Counsel. We find the Hon'ble 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:-

“There 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 Assessee's trading operations or enabling the management and conduct of the Assessee's 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 advantage is clearly not of an enduring nature. It is limited in its duration to six months and, moreover, the additional working hours 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.”

17. We find, the Hon'ble 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 Hon'ble High court at para 6 reads as under:-

“6. 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.”

18. The Hon'ble 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 Hon'ble High Court, following the decision of the Hon'ble Supreme Court in the case of Empire Jute Company (supra) has observed as under:-

“4. 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.”

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.”

(B.2.1) It is not in dispute that on similar facts and circumstances, for Assessment Year 2011-12, in assessee's own case, the issue in dispute in the present appeal before us has already been decided in favour of the assessee and against the Revenue by aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi. Further, neither side has brought any materials for our consideration to persuade as to take a view different from the view already taken on this issue by the Co-ordinate Bench of ITAT, Delhi in the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT, Delhi. In view of the foregoing, and respectfully following the aforesaid order dated 13.12.2019 of Co-ordinate Bench of ITAT,

Delhi, we decide the issue in dispute before us in favour of the assessee and against Revenue. Accordingly, the Assessing Officer is directed to delete the aforesaid addition of Rs.45,19,447/-.

(C) In the result, the appeal of the assessee is allowed for statistical purposes.

This order was already pronounced orally on 19.04.2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now, this written order is signed today on 21st April, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated:

Pk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

