

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.593/Viz/2019
(निर्धारण वर्ष / Assessment Year : 2009-10)**

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

Vs. M/s Facon Alloys Limited
Garividi
Vizianagaram
[PAN : AAAACF8101C]
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri GVN Hari, AR
: Shri MN Murthy Naik,CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 20.07.2022

घोषणा की तारीख/Date of Pronouncement

: 23.08.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]-1, Visakhapatnam in ITA No.419/2011-12/JCIT(OSD),C-3(1),Vsp/2017-18 dated 30.07.2019 for the Assessment Year (A.Y.) 2009-10.

2. Brief facts of the case are that the assessee company is engaged in the business of manufacturing, trading / selling and exporting of Ferro Alloys, filed its return of income for the A.Y.2009-10 on 25.09.2009, declaring total

income of 'Nil' after set off of brought forward unabsorbed depreciation of Rs.35,49,77,824/-. The case was selected for scrutiny. On verification of records, it was noticed that the assessee company had debited an expenditure of Rs.4,58,23,694/- towards repairs, which the Assessing Officer (AO) has held as capital in nature, whereas the assessee claimed the same as revenue expenditure. The AO has completed the assessment u/s 143(3) by disallowing Rs.4,58,23,694/- after allowing depreciation @15% on the said sum.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A). After considering the submissions of the assessee and by relying on the judicial decisions, the Ld.CIT(A) allowed the appeal of the assessee, saying that the expenditure which the assessee has incurred is revenue in nature.

4. Aggrieved by the order of the Ld.CIT(A), the revenue has preferred an appeal before the Tribunal and raised the following grounds :

1. *The order of the Ld.CIT(A)-1, Visakhapatnam is erroneous both on facts and in law.*

2. *The Ld.CIT(A) has erred in directing the AO to delete the addition of Rs.4,58,23,694 treating the same as revenue expenditure instead of capital expenditure, when the AO noted that the nature of work orders given to various parties shown in the bills reveal that the expenditure*

incurred on the works executed to renovate the furnace is capital expenditure, providing enduring benefit also leading to increase in capability.

3. *The CIT(A) failed to note that the original plant & machinery is more than 40 years old, having out-lived its life and the expenditure incurred during the year is nothing but renovation of the same, being capital in nature.*

4. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal.*

The sole issue in this appeal is that the expenditure incurred by the assessee is whether capital or revenue in nature. On this aspect, the Ld.DR has submitted that the nature of expenditure incurred by the assessee gives the advantage of enduring nature to the assessee company, such expenditure is not periodical in nature and it is more or less like one time repairs. The Ld.DR further submitted that the Ld.CIT(A) erroneously passed the order and therefore, requested to set aside the order passed by the Ld.CIT(A).

5. On the other hand, the Ld.AR submitted that the assessee company has incurred only repair works and there is no enhancement of capacity and if the assessee wants to change the entire unit, it would cost about more than Rs.60 crores. He further submitted that the assessee had incurred only Rs.4.58 cores and the Ld.CIT(A) has considered all these facts

and allowed the assessee's appeal rightly. The Ld.CIT(A) relied on the judicial precedents and passed the order. Therefore, he pleaded for confirming the order passed by the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on record. There is no dispute regarding quantum of expenditure incurred by the assessee, it is also not in dispute that the assessee has incurred repairs and there is no enhancement of capacity. The Ld.Counsel for the assessee has heavily relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Saravana Spinning Mills Pvt. Ltd. (SC) 293 ITR 201. We have perused the order of the Ld.CIT(A). For the sake of clarity, we extract order of the Ld.CIT(A) as under :

"4.4. At the outset, it is not in dispute that the asset that required repairs is the furnace no. 4 which is submerged Arch furnace. The submerged Arch furnace is one of the furnaces other than open Arch furnace used for 'ferro alloy' production. The furnace is basically a "steel shell" which will be converted to "crucible" by provided alumina extraction inside which will be protected by using 'tamping paste' which is electrically calcined. The 'slag' produced is highly corrosive with high temperatures. The slag and alloy are tapped out at intervals will be lined with 'silicon carbide' retraction which will withstand corrosive nature of slag. When the alloy is liberated the reaction of carbon with refractory ore oxide, a certain amount of 'wear and tear' takes place. In the process, the 'tamping paste' alumina refractory due to elevated temperatures. When the furnace is cooled with water, the damage of lining is known. This lining needs 'replacement' at an interval of 3 to 5 years. When the lining takes place the 'auxiliary' and 'allied' parts of furnace needs to be changed due the fact that they lose their strength due to excessive heat at 2000 degree centigrade. Having understood the process of working of furnace it is known that the material required for repairs is obviously 'Tamping paste', 'store consumption' includes mechanical, electrical, civil and fabrication but does not include the 'steel shell' are 'crucible lining'. It is seen from the details of expenditure that the appellant had spent the monies on their items. One of the items is capable of functioning independently without the furnace. However, the basic

furnace i.e. steel shell was not replaced. It was only repaired. The wear and tear depends on the number of times the heats are produced rather than the periodic repairs.

4.5. *It is one of the contentions of Assessing Officer that the furnace is procured in 1963 and never used for production is factually wrong. From the details furnished the furnace was procured in 1969 and went for repairs earlier. The expenditure incurred was not capable of increasing the capacity i.e. 14870 tones of ferro manganese. There are no contraverting material before Assessing Officer to come to the conclusion that the repairs enhances the capacity. At the most the efficacy may improve due to repair. The advantage could be efficiency of furnace which cannot be termed as enduring benefit due to the fact that the wear and tear depends on number of heats that the furnace undergoes in its life time. The expenditure therefore is meant for **preserving** and maintaining the existing asset but not **bringing or** creating a new asset or advantage. Further, the expenditure being huge is not the consideration to decide whether it is revenue or capital. The expenditure can be a onetime affaire or recurring affaire. What determines the character or nature of expenditure whether capital or revenue is the totality of facts and circumstances of each case. In the instant case the Assessing Officer's observation are not supported by material. Therefore on overall consideration of facts and circumstances and the examination of bills I am of the considered opinion that the expenditure incurred is revenue in nature and therefore to be allowed. Accordingly, the addition of Rs.4.58 crore made by Assessing Officer is deleted."*

We have also perused the decision rendered by the Hon'ble Supreme Court in the case of CIT Vs. Saravana Spinning Mills (supra), as it has categorically held the difference between capital expenditure and revenue expenditure. The ratio laid down by the Hon'ble Apex Court, in the case, the repairs fall under the category of revenue expenditure only. The Ld.AR relied on the decision of ITAT Chennai Bench in the case of ACIT Vs. M/s Kannappan Iron & Steel Co.Pvt.Ltd. in I.T.A.No.1951/ Mds/2009 dated 24.06.2011. Perusal of the assessment order, order of the Ld.CIT(A) clearly shows that the total expenditure

on repairs was Rs.4,58,23,694/-. No new asset came into existence as such the entire expenditure is allowable as revenue in nature. Apart from this, the Ld.CIT(A) has categorically mentioned in his order that the expenditure incurred was not capable of increasing the capacity i.e. 14870 tonnes of ferro manganese. There is no contradicting material before AO to come to conclusion that the repairs enhances the capacity. He further mentioned that the expenditure is meant for preserving and maintaining the existing asset, but not bringing or creating a new asset or advantage. The expenditure being huge is not the consideration to decide whether it is revenue or capital expenditure. The expenditure can be one time affair or recurring affair. Determination of capital or revenue expenditure is totally based on the circumstances of each case. He further mentioned that the AO 's observations are not supported by material, therefore, on overall facts and circumstances, he opined that the expenditure is revenue in nature. Considering the facts and circumstances of the case and the case laws relied upon by the assessee, we are of the view that the Ld.CIT(A) has rightly considered the case of the assessee, therefore, we do not find any infirmity in the order passed by the Ld.CIT(A) and hence dismiss the grounds raised by the revenue.

7. In the result, appeal of the revenue is dismissed.

Order Pronounced in open Court on 23rd August, 2022.

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 23.08.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Facon Alloys Limited, Garividi, Vizianagaram
2. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
3. प्रधान आयकर आयुक्त / The Principal Commissioner of Income Tax-1 Visakhapatnam
4. आयकर आयुक्त (अपील) / The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam