

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.7720/Del./2019  
(ASSESSMENT YEAR : 2013-14)**

Uptodate Plastics & Packagings Pvt. Ltd., vs. ACIT, Circle 27 (1),  
316, Laxmi Deep, New Delhi.  
Laxmi Nagar District Centre, Vikas Marg,  
Delhi – 110 092.

**(PAN : AAACU0213C)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S. Krishnan, Advocate  
REVENUE BY : Ms. Rajeshwari R., Sr. DR

Date of Hearing : 20.12.2022  
Date of Order : 23.12.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.  
CIT (Appeals)-9, New Delhi dated 08.07.2019 for the assessment year  
2013-14.

2. The ground of appeal taken by the assessee reads as under :-

“On the facts and in the circumstances of the case and in law, the authorities below erred in holding repair expenses of Rs.33,09,394/- as incurred by the assessee to be capital in nature, thereby denying deduction of the same as revenue expenditure.”

3. Brief facts of the case are that assessee in this case is engaged in the business of manufacturing of Hot Melt Adhesive and trading of Hot Melt Adhesives. In assessment order, Assessing Officer noted that assessee was asked to provide details of repair and maintenance expenses and why the same should not be treated as capital expenditure. AO noted that assessee in his submissions submitted the details of repair & maintenance of building amounting to Rs.33,09,394/-. AO observed that same has been paid for modification to existing building including strengthening of structure which has resulted into addition to the existing building having book value of Rs.14,52,314/- at Surajpur as per bill dated 31.12.2012 of M/s. Neenv Infrastructure Pvt. Ltd. for Rs.31,32,555/-. AO was of the opinion that assessee has booked capital expenditure of Rs.33,09,394/-, hence he disallowed the same and added to the income after allowing 5% of depreciation.

4. Against the above, assessee filed an appeal before the Id. CIT (A). Ld. CIT (A) noted assessee's submissions that assessee has incurred expenditure on effective repair and maintenance in the impugned assessment year, and in the subsequent years, when assessee incurred capital expenditure the same was duly capitalized. It was pleaded that assessee has not made any addition in the capacity by way of capital expenditure for the impugned assessment year, hence the same is revenue

in character. Ld. CIT (A) laconically dealt with the issue and observed that the assessee has not explained the basis of substantial reduction in repair and maintenance expenses and quantum jump in capital expenditure in subsequent years and proceeded to uphold the order of the AO. The order of ld. CIT (A) in this regard may gainfully refer to as under :-

“6.1 I have considered the submissions made by assessee as well as observations of the AO. It is noted that the nature and quantum of expense on account of Repair & Maintenance during the year has gained the character of capital expenditure as under:

S.No.	Assessment year	Factory Repair (Rs.)	Modification of building resulting in capitalization (Rs.)
1	2013-14	Rs.33,09,394	-
2	2015-16	Rs.13,760	-
3	2017-18	Rs.24,727	Rs.47,48,266
4	2018-19	Rs.2,54,248	Rs.55,92,739

6.2 The Appellant has not explained the basis of substantial reduction in Repair and Maintenance expense and quantum jump in capital expenditure in subsequent years. Under the circumstances, I am inclined to uphold the impugned addition and grant of depreciation by treating the impugned expenditure as of capital in nature. Appellant fails in this ground of appeal.”

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that assessee has only made expenditure on repair of old structure. That even AO has noted that it is only to strengthen the structure. There is no case in increase of capacity, hence he pleaded that the said expenditure should be allowed as revenue

expenditure. He further submitted that in subsequent years, when assessee has incurred capital expenditure it has duly capitalized the same.

7. Per contra, Id. DR for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, we note that assessee in this case has repaired its old structure which the AO has mentioned that it was for strengthening the structure. Even AO has not been able to point out that the same resulted in addition of capacity. Just because assessee in subsequent years capitalized some other expenditure does not mean that this year expenditure also should be treated as capital expenditure. An expenditure on repairs can be categorized as capital expenditure only if it increases the capacity or the expenditure is found to be in the capital field. On the facts and circumstances stated in this case, in our considered opinion, the expenditure is not in the capital field. Hence, assessee deserves to succeed. We set aside the orders of the authorities below and direct that the addition be allowed as revenue expenditure.

9. In the result, the appeal of the assessee stands allowed.

**Order pronounced in the open court on this 23<sup>rd</sup> day of December, 2022.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 23<sup>rd</sup> day of December, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-9, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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