

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.36/SRT/2022

निर्धारणवर्ष/Assessment Year: (2014-15)

(Virtual Court Hearing)

Pragati Glass & Industries Pvt. Ltd., Kharach, Kosamba (R.S), District. Bharuch, Bharuch -392001.	Vs.	The ACIT, Circle-1, Bharuch.
(Assessee)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCP7377H		

Assessee by	Shri Surendra Modiani, CA
Respondent by	Shri Vinod Kumar, Sr.DR
Date of Hearing	13/12/2022
Date of Pronouncement	30/12/2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-12, Ahmedabad, [in short “the ld. CIT(A)”], which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 29.12.2017.

2. The grounds of appeal filed by the assessee are as follows:

*“1. The learned Commissioner (Appeals) erred in upholding the disallowance of Rs.1,78,81,436/- by considering expenditure on mould as Capital Expenditure.*

*Your assessee prays that the addition and disallowance be deleted.”*

3. During the assessment proceedings, the assessing officer examined the claim of the assessee and has treated the expenditure claimed by the assessee on purchasing moulds used for producing glass bottles as capital in nature in contrast to the assessee showing it as revenue expenditure with differed claimed

of the expense based on an arbitrary formula. The assessing officer made a chart in the assessment order, and noted that the assessee has debited 25% of the expenses claimed for AY 2011-12 to AY 2013-14 and further debiting 25% of the current year purchases w r t moulds. Therefore, the assessing officer noted that the assessee is following a practice of part deferred claim of such expenses spreading it to four years. This accounting policy is being followed by the assessee, by its own submission, for past 20 years. Total amount claimed as Expenditure with respect to purchases of moulds was Rs.4,98,95,387/-. This included spares on moulds of Rs.1,54,45,732. The AO has given elaborate reasons why such expenditure should be treated as capital in nature rather than revenue in nature as claimed by the assessee. The AO has allowed such expense on spares on moulds as revenue in nature and only treated the balance of Rs.3,44,49,655/- regarding the purchase of moulds as capital in nature and allowed 15% depreciation as applicable in the case of plant & machinery. The findings of the assessing officer is reproduced below:

*“5.2.1 The submission of the assessee is duly considered but found not acceptable on account of the discrepancies noticed as follows:*

*1. It is submitted by the assessee that the moulds are made up of cast iron material based containers in which hot glass at the temperature of 1800°F is poured and casted into required shapes and design to form glass containers by blowing hot air. The mould gives shape and design to the product. The company operates in make to order environment.*

*i) The assessee vide its submission has described the process of manufacturing of glass bottles with the help of relevant diagrams and flow charts. According to the submission, it is evident that the main part of the plant & machinery is mould and without mould the machine can't be used for manufacturing work.*

*ii) It is submitted by the assessee that mould used for one customer cannot be used for another customer as drawing and design of product desired by the customers varies from product to product. A Mould has life equal to an order. As the order gets completed, the Mould becomes scrap.*

*In addition to this, a mould can be used for producing only a certain number of pieces that ranges from 3.0 lakh to maximum 5.0 lakh per mould. There after the quality of the mould degenerates and it needs to be replaced. The average life of a Mould is around 6 months to 18 months. Hence, the expenditure incurred on moulds should be allowed as revenue expenditure.*

*There is no merit in the contention of the assessee. Firstly, the assessee has stated that a mould has life to an order. Secondly, it is stated by the assessee*

that a mould can produce maximum number of products ranging from 3 to 5 lakh pieces only. From the submission of the assessee, it is not clear enough as to what the actual life of a mould used by it is. Further, it is stated by the assessee that the average life of mould is around 6 months to 18 months only. So, it is not clear whether all the moulds are used for 6 months to 8 months or the moulds are used for a period in which the demand of a particular customer is completed.

iii) It is further submitted by the assessee that around 7-8 years back, the Income Tax Department of had advised us to write off the mould expenses in four years. However, the assessee has not produced any documentary evidences to substantiate its claim.

iv) It is further submitted by the assessee that for this year expenditure were incurred on these moulds. This expenditure is not an expenditure on machinery but it is an expenditure on moulds, the moulds being part of larger machines, Expenditure on replacement of parts of machinery is apparently in the nature of revenue expenditure.

There is no merit in the contention of the assessee. The assessee has stated that the expenditure on replacement of parts of machinery is apparently in the nature of revenue expenditure. The facts of the present case suggest otherwise that this is not a replacement of parts of machinery. The mould itself is the prime part of the machinery without which this machine cannot manufacture products.

v) The various case laws relied upon by the assessee in its submissions are clearly distinguishable on facts from the assessee's case and hence are inapplicable to the present situation.

vi) The assessee has also stated that for the assessment year 1995-96, the mould expenses that we claimed was disallowed by the AO claiming that such mould expense was capital in nature against which we filled an appeal to CIT(A) dated 07.03.2003 having appeal no.CAB/III-108/2003-04. The order was passed by the CIT(A) in our favour dated 17.03.2004. Hence, the expenses of Moulds were allowed as revenue expenses.

The submission of the assesses is not acceptable. The issue involved in that particular AY.1995-96, was on account of spare of moulds and dies. It was further observed that during the course of assessment proceedings as well as in appellate proceedings for the assessment year 1995-96, it was observed that the most of bills submitted by the assesses were in relation to spare of moulds and on further examination of the said bills, it was found that the bills contained not one or two spare parts in number, but the number of spare parts are 20, 30, 40 and average cost was about Rs.140/- to Rs.450/-. There were only few parts which were costing Rs.1000/- to Rs.1,500/- and very few parts costing Rs.4,500/-.

As per the decision of the Ld.CIT(A) in the case of the assessee for the assessment year 1995-96, expenditure on various parts /spare of moulds incurred by the assessee were in nature as the expenditure of each item was below Rs.5,000/- as per the Section 32(1) of the Act, wherein, it has been

mentioned that if actual cost of machinery and plant does not exceeds Rs.5,000/-, the actual cost itself shall be allowed as deduction. In view of this provision of the Act, the Ld. CIT(A) allowed the said expenditure as revenue.

5.2.2 While going through the assessee's assessment order pertaining to AY 1995-96, it was observed that the assessee himself had provided certain information about the moulds which it had never provided during the assessment proceedings for A.Y.2015-16. It was noticed that the assessee himself argued then that the mould in itself is made up of 10 or more parts and it itself is a machine. Hence, the spare parts used for its repair and maintenance should be allowed as revenue expenditure. This contention of the assessee was accepted then by the CIT(A).

Based on this argument stated by the assessee itself, it is evident that the mould is not a spare part used in bigger machines as claimed by him rather it is a machine in itself. The assessee treats the moulds as a spare part is also evident from the fact that the Moulds written off head consists of the expenses incurred for purchase of the moulds as well as moulds spare parts.

The manufacturing process described by the assessee suggests that the moulds are used under constant high temperature of 1800°F. In such a high temperature environment, it is obvious that the moulds may be undergoing some wear and tear. The fact that the "moulds spare parts" are used to repair the damaged moulds suggests that this must be prolonging the actual life of the moulds. This pattern is seen only in case of machines and not in the case of spare parts. Hence, the mould itself is a machine.

During the course of assessment proceedings, the assessee has furnished certain details about the use of the moulds. The assessee had submitted that the moulds are used as per the requirement of the customer. In answer to the question of what is the minimum number of pieces per order of manufacturing glass bottles by a customer is accepted by you, the assessee replied that the minimum number required is 10,000 pieces per order. The next question was asked about what is done to the mould from which only 10,000 pieces are manufactured? In answer to this question the assessee replied that it is sold out as a scrap. From this discussion it is clear enough that the assessee sells it out and never keeps it as fixed assets.

The assessee was asked about his income from selling off the scrap generated from used moulds.

The assessee was not able to justify it. From this two inference could be drawn:  
a) The assessee never sold the moulds and kept it for future use as fixed asset (as the mould can produce 3 to 5 lakh pieces so where the assessee gets order of 10000 pieces only and the useful life of mould is not exhausted).

b) The assessee sale out the mould as scrap as soon as the order is finished and it is not used again for any other order. But the assessee has not shown any documentary evidence to suggest that it has offered to tax any income generated from selling of scrap.

From the discussion with the AR of the assessee, it was revealed that the company has in its stock around 3000 mould which can produce 200 different varieties of glass bottles. When the AR of the assessee was confronted about the stock of moulds, he stated that they are collected over number of years and including purchases made during the year. The assessee is trying to diversify its product range and to do that it needs to buy new mould as per requirement of the customers. This process involves huge expenditure for buying new moulds. Hence, to minimize its working cost the assessee is claiming expenditure on moulds as revenue expenditure (Deferred revenue expenditure).

In the light of above discussion, it is quite clear that the moulds are providing enduring benefit to the assessee. The assessee itself is treating the moulds as capital assets as it is storing the moulds for future orders. This practice of treating the mould as revenue expenditure is in contradiction to the benefits provided by the moulds and treatment meted to it after the end of its useful life. It is evidently clear that the moulds itself is a machinery without moulds value of plant & machinery is Nil and thus, the same is in capital in nature. The expenses incurred of Rs.1,54,45,732/- on account or workshop Spare debited in profit and loss account under the head of Moulds written off is hereby allowed as Revenue expenditure. The remaining amount of Rs.3,44,49,655/- (Rs.4,98,95,387/- less Rs.1,54,45,732/-) under the head of "mould written off" debited in Profit and loss account is capitalized after allowing depreciation on the same.

A.Yr.	Moulds (purchase amount)	Value as on 01/04/2013	Written off except spare of mould (as per P&L account)	Depreciation allowed @ 15%	Excess claimed by assessee	W.D.V as on 31/03/2014
2011-12	24625592	15123191	6156398	2268479	3887919	12854712
2012-13	39488259	28530267	9872065	4279540	5592525	24250727
2013-14	45889578	39006141	11472395	5850922	5621473	33155220
2014-15	27795188	27795188	6948797	4169278	2779519	23625910
Total			34449655	16568219	17881436	

Workshop spares as on 31.03.2014

Opening Stock	::	Rs. 8,37,043/-
Purchase	::	Rs. 1,55,33,936/-
		Rs. 1,63,70,979/-
Less: Closing Stock	::	Rs. 9,25,247/-
Consumption	::	Rs. 1,54,45,732/-

Value of moulds except spare parts of moulds is works out as under:  
Moulds written off : Rs. 4,98,95,387/-  
Less: Spares of moulds : Rs. 1,54,45,732/-  
Rs.3,44,49,655/-

*5.2.3 Considering the above facts and submission made by the assessee, the expenses moulds written off comes to Rs.3,44,49,655/- on which depreciation @15% is allowable which is of Rs.1,65,68,219/- and thus, remaining amount of Rs1,78,81,436/- is disallowed and added to the total income. Penalty proceedings u/s. 271(1)(c) of the Act is also initiated for furnishing inaccurate particulars of income.”*

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has partly allowed the appeal of the assessee. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

5. The Ld. Counsel for the assessee submits that the expenditure incurred on moulds are revenue expenditure because its life is vary from one assignment to other assignment taken by the assessee from the customers. In support of its claim the Id Counsel for the assessee has largely depended on the fact that such expenditure is replacement of parts which is required on regular basis. It was submitted that the moulds used for one customer cannot be used for another customer as drawing and design of product desired by the customers varies from product to product. Thus, mould has a life equal to an order. If a different customer gives a similar design then that mould can be used otherwise it becomes scrap. Each mould can produce 3 to 5 lakh bottles and has an average life 6 to 18 months. Therefore, Id Counsel contended that such expenditure should be treated as revenue expenses.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. First of all, we should go through the relevant findings of Id CIT(A) which is reproduced below:

*“....4.4 The plea of the assessee is not acceptable. The assessee company is engaged in the business of manufacturing glass bottles and other components. It*

has shown expenditure on moulds and dies claiming it to be replacement of parts. But as held by the AO these moulds, which are made of cast iron material containers in which hot glass is poured and cast into the various shapes, is actually the main part of the plant and machinery and without such mould, manufacturing of the end product i.e. the glass bottles cannot be made. **It is actually an integral, essential and inseparable part of the glass bottle manufacturing plant and machinery.**

4.5 It is stated that as per the depreciation chart provided by the Income tax Rules New Appendix I [ effective from assessment year 2006-07 onwards), See Rule 5 **TABLE OF RATES AT WHICH DEPRECIATION IS ADMISSIBLE-III Machinery and Plant** there is a separate category as per clause (3) (vii) '**modus used in rubber and plastic goods factories**'. For this category of capital asset a higher rate of depreciation is provided for. But this shows that as per Income tax Rules, moulds are tangible capital asset of the nature machinery and plant on which depreciation rate as the omnibus clause (1) {other than the exception clause assets} @ 15% normal rate is applicable (7.5% if usage is less than six months).

4.6 Thus it is seen that the assessee is treating the expenditure on purchase of capital asset as revenue in nature and arbitrarily spreading the expense made in year to four years including the year the purchase is made. It is not at all backed by Income tax law. Even if the method was not agitated in earlier years, Rule of consistency cannot be followed here as there is no ambiguity regarding the issue here. Allowance of such accounting method is an error that impinges upon the principles of uniform application of law and certainty of law. It is necessary not to allow such error to be perpetuated further and correct it as soon as the issue is raised. It is added that the reliance of the assessee on the appellate order for AY.1995-96 is out of place as in that case a clear finding of fact was made by the Ld CIT(A) that largely the expenses claimed were part of spares of moulds. This is stated by the AO here as well. Further the AO has fairly allowed purchase cost of spares on moulds as revenue expenditure.

4.7 However, the assessee has taken an additional plea without prejudice to its contesting the above treatment by the AO, stated that it should be allowed additional depreciation u/s 32(1)(iia) of the Act in respect of cost of moulds acquired during the year. In this regard relevant part of the provision of section 32 is reproduced as under:

**“Depreciation.**

**32. (1) In respect of depreciation of—**

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) .....

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

**Provided further that** where an asset referred to in clause (i) or clause (ii) or clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduct/on under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:

**Provided also that** where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset:

*Explanation 3.—For the purposes of this sub-section, the expression "assets" shall mean— (a) tangible assets, being buildings, machinery, plant or furniture;*

.....  
*(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):*

4.7.1 Thus for the **current year purchase** of plant and machinery (**moulds**) used in manufacturing process an additional depreciation of 20% (if used for less than 6 months then 10% is allowable). There is no denying that the assessee has purchased spares in the current year as well and in view of section 32(1)(iia), it is eligible for additional depreciation as per law. The AO is directed to allow the same after due verification of period of usage.

4.8 In view of the above discussion, ground of appeal 2 is dismissed and ground of appeal 3 claiming additional depreciation is allowed.

5. Ground of appeal no.4 is against charging of interest u/s 234A & 234B of the IT Act, 1961. Since charging interest is mandatory and consequential in nature, accordingly, this ground of appeal is dismissed. The AO is directed to take action as per law.

6. The last ground of appeal, is residual in nature. Therefore, the same is dismissed for statistical purposes,

7. In the result, the appeal is **partly allowed.**”

8. We have considered the submission of the Id Counsel for the assessee and Id DR for the Revenue and noted that there is merit in the submission of Id DR for the Revenue. We have gone through the above findings of Id CIT(A) and noted that Id CIT(A) has reached on reasonable conclusion. The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the appeal of the assessee.

9. Before parting, we would like to state that there is arithmetical error in the findings of assessing officer, which is reproduced below:

*“5.2.3 Considering the above facts and submission made by the assessee, the expenses moulds written off comes to Rs.3,44,49,655/- on which depreciation @15% is allowable which is of Rs.1,65,68,219/- and thus, remaining amount of Rs1,78,81,436/- is disallowed and added to the total income. Penalty proceedings u/s. 271(1)(c) of the Act is also initiated for furnishing inaccurate particulars of income.”*

10. The depreciation at the rate of 15% on Rs.3,44,49,655/- comes to Rs. 51,67,448/-, whereas assessing officer shown at Rs.1,65,68,219/- and accordingly the remaining amount will alter. We direct the assessing officer to examine these figures and correct the typographical/ arithmetical error.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 30/12/2022 by placing the result on the Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूत /Surat

दिनांक/ Date: 30/12/2022

**SAMANTA\*\***

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat