

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1203/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2006-07**)

ACIT Corporate Circle-2, Coimbatore.	बनाम / Vs.	M/s. KPR Mills Ltd. (formerly known as M/s. KPR Mill Pvt. Ltd.) No.9, Gokul Building, AKS Nagar Thadagam Road, Coimbatore – 641 002.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AACCK-0893-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri N. Arjun Raj (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri M. Rajan (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	31-01-2023
घोषणा की तारीख / Date of Pronouncement	:	08-02-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2006-07 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Coimbatore [CIT(A)] dated 15-02-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 31-12-2008. The grounds raised by the revenue read as under: -

1. The order of the learned Commissioner of Income tax (Appeals)-I, Coimbatore is against facts and circumstances of the case.
2. The learned Commissioner of Income tax (Appeals)-I, Coimbatore has erred in allowing the expenditure incurred on machinery as revenue expenditure u/s 37(1) of the Act.

3. The Learned Commissioner of Income tax (Appeals) ought to have appreciated that in the instant case, machineries replaced give the assessee a benefit of enduring nature and hence the expenditure incurred on such replacement is on the nature of Capital expenditure.

4. The Learned Commissioner of Income tax (Appeals) ought to have considered the case of CIT Vs. Saravana Spinning Mills Pvt Ltd. (293 ITR 201) wherein the Hon ble Supreme Court has approved the line taken in several High Court decisions that where an expenditure falls under sections 30 to 38 but is not allowable on account of the restriction contained in the respective section, it cannot be claimed under the residuary provision of section 37(1).

As is evident, the revenue is aggrieved by allowance of expenditure incurred on machinery as revenue expenditure u/s 37(1).

2. The Ld. CIT-DR advanced arguments supporting the case of the revenue. It has been submitted that the facts of AY 2005-06 as decided by Tribunal vide ITA No.1873/Mds/2016 order dated 14.02.2017 differ on facts and reliance on the same by Ld. AR is erroneous. The Ld. AR also advanced arguments and filed written submissions supporting the case of the assessee. Having heard rival submissions, the appeal is disposed-off as under.

Proceedings before lower authorities

3.1 The assessee claimed amount of Rs.394.69 Lacs in the computation of income as revenue expenditure u/s 37(1) for replacement of 4 Autoconer Machineries. The replacement was stated to be part of modernization process carried out by the assessee to improve the quality and to survive in the business by utilization of advances technology. It was submitted that the replacement would not result into increase in installed production capacity of the assessee.

3.2 The Ld. AO held that the claim could be made either u/s 31(i) which deals with 'current repairs' or under residual Section 37(1).

The replacement of machinery would be closer to be called as 'current repairs' and therefore, considering the decision of Hon'ble Supreme Court in the case of **Sarvana Spinning Mills (P) Ltd. (293 ITR 201)**, the claim has to be disallowed. Even otherwise, as examined u/s 37(1), the replacement would be in the nature of capital expenditure which is supported by ratio of various judicial decisions. Finally, the expenditure was held to be capital expenditure and the deduction as claimed by the assessee was denied.

3.3 The Ld. CIT(A) relied on the report of Chartered Engineer as furnished by the assessee to observe that the capacity of 30240 spindles remained the same in both the years. Since the expenditure had no ingredients of improving the production capacity of the plant, the expenditure would be revenue expenditure and accordingly, Ld. AO was directed to allow the same. Aggrieved the revenue is in further appeal before us.

Our findings and Adjudication

4. From the fact, it emerges that the assessee has replaced certain machineries during the year. The same has been capitalized in the books of accounts but claimed as revenue expenditure in the computation of income. We find that the claim of the assessee would necessarily fall under specific Section of 31(i) which deals with the 'current repairs'. The same would prevail over residual Section 37(1) which would apply only to those expenditure which are not covered u/s 30 to 36 of the Act. Therefore, the claim of the assessee has to be ascertained at the threshold of Sec. 31(i) only. The Ld. CIT(A) has not examined the claim under these provisions

but merely gone by the fact that there was no increase in production capacity. We also concur with the submissions of Ld. CIT-DR that the decision of Tribunal for AY 2005-06 differ on facts and the same could not be applied since in that year, the assessee has merely replaced blow room machinery, draw frame, speed frame and compressor which has been held to be parts of machinery installed in the spinning mill and these parts cannot do any independent functioning in the spinning mill. Therefore, considering the facts of the case, the impugned order is set aside and the matter is restored back to the file of Ld. CIT(A) for do novo adjudication on the aforesaid lines after considering assessee's submissions as filed before us. The assessee is directed to substantiate its claim.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 08th February, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 08-02-2023
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF