

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 5664/DEL/2019
Assessment Year: 2014-15**

Nitrex Chemicals India Ltd., E-37, FF, Kalka Ji, New Delhi-110019. PAN- AAACF7820L	<u>Vs</u>	ACIT Circle-18(2), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Shri Ved Jain, Adv.; Ms. Uma Upadhyay, CA	
Department represented by	Shri Ajay Kumar Arora, Sr. DR	
Date of hearing	13.02.2024	
Date of pronouncement	20.02.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-6, New Delhi, dated 24.04.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

“1. That the learned CIT(A) has erred in law and facts by not quashing the order and therefore the Id.AO should be directed to accept returned Income.

2. That the learned CIT(A) has erred in law and facts by confirming the action of the Ld. AO of treatment of capital expenses out of repair and

maintenance and Stores Consumed of Rs 45,17,811 (Rs.27,69,627+Rs.17,48,184) (after reducing depreciation @ 15% - Rs.38,40,139) and therefore the Id. Assessing Officer is to be directed to allow the same in full while computing total income.

3. *That the Id. CIT(A) has not specifically directed to treat the balance amount of Rs.34,92,059/- as revenue expense out of the capital expenditure treated by the Id.AO and therefore the Id.AO should be directed to allow the same while computing the total income.*

4. *That the learned CIT(A) has erred in law and facts by confirming the action of the Id. AO for initiating penalty proceedings u/s 271(1)(c) of the Act and therefore Id. AO should be directed to drop the said penalty proceedings.*

5. *That your appellant craves a leave to add, alter or amend any grounds at the time of hearing.”*

2. Facts, in brief, are that the assessee filed its revised return declaring total income at Rs. 14,55,96,240/- on 31.03.2016. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) was framed vide order dated 27.12.2016. The AO while framing the assessment made disallowance of expenses u/s 14A of the Act amounting to Rs. 1,64,269/-. The AO observed that the assessee had claimed repair, maintenance and stores/spares consumed, which as per AO was excessive. He, therefore, called upon the assessee to explain as to why the expenses should not be disallowed. As per the AO the assessee had claimed capital expenses on account of repairs, maintenance, stores/spares consumed amounting to Rs. 56,59,086/- and Rs. 23,50,784/- on the basis that the assessee would have enduring benefit. The AO, therefore, disallowed the expenditure of Rs. 68,08,390/- . Out of

the repair and maintenance expenses the AO disallowed Rs. 39,67,723/-. Thus, the AO assessed assessee's income at Rs. 15,65,36,622/- as against returned income of Rs. 14,55,96,240/-. Aggrieved against this the assessee preferred appeal before the learned CIT(A) who partly allowed the appeal of the assessee. Thereby the learned CIT(A) deleted the disallowance of expenditure made by invoking the provisions of Section 14A. However, in respect of disallowance of Rs. 68,08,390, the learned CIT(A) reduced the capitalization of expenses thereby the expenses of Rs. 27,69,627/- on account of repair & maintenance and Rs. 17,48,184/- on account of store & spare consumed were directed to be capitalized and depreciation thereon @ 15% was allowed. Aggrieved by the order of learned CIT(A) the assessee is in appeal before this Tribunal.

3. Ground nos. 1 & 5 are general in nature and need no separate adjudication. Ground no. 4 is premature, hence dismissed. Ground no. 3 is not pressed and stands dismissed accordingly.

4. The only ground that survives for adjudication is ground no. 2. Apropos to ground no. 2 learned counsel for the assessee submitted that the lower authorities failed to appreciate the fact that the expenditure would fall in the category of revenue expenditure as it relates to routine maintenance and repairs. The learned CIT(A) out of the total expenditure directed a sum of Rs. 27,69,627/- on account of

repair & maintenance and Rs. 17,48,184/- on account of stores and space consumed to be capitalized. However, learned CIT(A) allowed depreciation on this sum @ 15%. He reiterated the submissions as made in the written synopsis. For the sake of clarity the synopsis of the assessee is reproduced as under:

“1. This is an assessee appeal filed against the order dated 24.04.2019 passed by CIT(A) confirming disallowance of Rs. 45,17,811/- made by AO on account of repair and maintenance. stores and consumable despite being revenue in nature as the same was incurred to maintain the present condition of existing assets. No new assets resulted by such repair and maintenance.

2. Brief facts of the case are that the assessee is a company incorporated on 07.02.2001, engaged in the business of manufacturing of Industrial nitrocellulose (Chemicals) and having manufacturing plant in Gujrat.

3. Assessee is incorporated in 2001 and no major repair work undertaken since its incorporation and as assessee uses chemicals, acid etc., to produce the finished goods due to which strength of civil works of building get destroyed and even plant and machinery used for production get rusted. Thus, in order to maintain the present condition existing assets, assessee has to undertake civil repair of building and plant & machinery.

4. Further, vide reply dated 30.11.2016, assessee submitted copy of invoices of repair and maintenance at PB pg no. 42-52 and copy of invoices of store and consumable at PB pg no. 53-59.

5. On kind perusal of the same it can be observed that all the expenditure incurred for repair and maintenance of building, plant and machinery, electrical instruments and store consumptions are just to preserve and maintain an already existing asset. On the contrary, AO has not brought any material on record to show that it is an adverse material contrary to the bills and how the work carried by the assessee will have enduring benefit.

6. Ld. AO, however, ignoring the evidences brought on records by assessee treated the repair and maintenance as capital in nature also confirmed by CIT(A)

7. Now the assessee is in appeal before this Hon'ble Tribunal against the action of the AO and CIT(A) treating the repair and maintenance, stores and consumable as capital expenditure.

EXPENDITURE INCURRED TO PRESERVE AND MAINTAIN THE EXISTING ASSETS IN PRESENT CONDITION

- Reliance is also placed in the case of in the case of CIT v. TS Tech Sun India Ltd. in ITA No. 335/2012 dated 03.07.2012 Delhi High Court wherein it was held that the expenditure was in the nature of repairs incurred in order to preserve and maintain the existing asset namely, the factory building and therefore was allowable as revenue expenditure as no new asset or enduring advantage was obtained by the assessee by incurring the expenditure. Findings are as under.-

6. The narration of the facts and the findings recorded by the income tax authorities and the Tribunal as above would clearly show that it has been factually found by the Tribunal that no new asset or enduring advantage was obtained by the assessee by incurring the expenditure. No extra capacity or space was created in the factory by repairing the roof and the floor. These are findings of fact recorded on the basis of the material on record and those findings have not been challenged or shown to be perverse or based on no material. Having regard to the well settled position that unimpeached findings of facts do not give rise to any substantial question of law, we find no merit in the appeal filed by the revenue which is dismissed with no order as to costs,"

- Further reliance can also be placed in the case of CIT v. M/s MAC Charles (India) Ltd. ITA No.488/2009 dated 17.11.2014 wherein Hon'ble Karnataka High Court held that

9. Merely because the income of the hotel has increased, it does not necessarily follow it is because of the refurnishing or repair work done to the hotel rooms. That may be one of the factor. The real test is whether all those acts constitute replacing the existing asset. The existing asset is the hotel building and its rooms. When no extra flooring space or extra room capacity is added on account of such repairs, it cannot be said that a new asset has come into existence All these repairs are done to preserve and maintain an already existing asset. In the course of such repairs, if they have upgraded the

facilities to international standards, then that would not constitute a new asset. Therefore, the Tribunal was justified in holding that the expenditure incurred towards repairs and replacement of old parts would be in the nature of revenue expenditure and not capital expenditure

8. *Reliance is also placed on the judgement of Hon'ble ITAT Delhi in the case of HI-TECH GEARS LTD VS DCIT-I.T.A. No. 4669/DEL/2015 dated. 28.05.2019 - Where expenditure have been incurred to keep the existing assets in present condition and no adverse evidence has been brought on record by the AO to show that the expenses incurred by the assessee is enduring in nature, the expenses cannot be said to be capital in nature. The relevant findings of the court are as under:*

8. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee incurred expenditure for fixing Alco Bond Sheets on outside wall of the factory building to maintain the present structure and also incurred expenditure in respect of interior work. The assessee incurred expenditure only for keeping an existing asset into its present condition Besides this, the assessee has not carried out any extension to the existing building, which could classify the said expenses as capital expenditure. The Assessing Officer has not brought any material on record to show that it is an adverse material contrary to the bills and the work carried out by the assessee and the said expenses were giving an enduring benefit to the assessee. All these repairs are done to preserve and maintain an already existing asset. In the course of such repairs, if they have upgraded the facilities by fixing of Alco Bond sheets on outer walls of the building, which do not constitute a new asset or a new advantage. The contention of the Ld. AR that expenditure cannot be covered as current repairs, the same is eligible u/s 37(1) of the Income Tax Act as revenue expenditure as the repairs were done to preserve and maintain an already existing asset and to improve its longevity. There was no new assets created by the assessee. Therefore, CIT(A) as well as the Assessing Officer was not right in making disallowance of current repairs out repairs & maintenance of building. Thus, appeal of the assessee is allowed."

Reliance in this regard can also be placed on the following judgements as well-

M/S. INFOSYS LTD. VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-3 (1) (1) THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE - 3 (1) ((1), BANGALORE, 2022 (11) TMI 1316 Dated 30.11.2022

NORMA INDIA LTD. V. ACIT ITA NO. 1971/DEL/2014 DATED 29.06.2016 ITAT DELHI

DY. CIT V. IKEA TRADING (INDIA) PVT. LTD. ITA NO. 5393/DEL/2010 DATED 02.06.2016 ITAT DELHI

DCIT V. AHMEDABAD PACKAGING INDUSTRIES LTD. ITA NO. 2375/AHD/2013 DATED 11.05.2017- ITAT AHMEDABAD

SARANG AND ASSOCIATES V. DCIT ITA NO. 1961/MUM/2015 DATED 24.11.2016- ITAT MUMBAI

ABM STEELS PVT. LTD. V. ACIT ITA NO. 1855/AHD/2011 DATED 24.04.2015

9. *That no new assets come into existence and nothing has been brought on record by the AO as well as CIT(A) which prove that a new asset has come into existence.*

10. *Further, in the present case, no adverse evidence has been brought on record by the AO to show that the expenses incurred by the assessee is enduring in nature, the expenses cannot be said to be capital in nature*

11. *Therefore, in view of the facts of assessee's case as well as in view of the settled position of law in this regard, the addition made by the AO and further sustained by the Ld. CIT(A) by treating the Repair & Maintenance and Stores & Consumable expenditure to be of capital nature is liable to be deleted."*

5. On the other hand, learned DR supported the orders of the authorities below.

He contended that the lower authorities clearly demonstrated that these items have enduring benefit, therefore, cannot be categorized as revenue expenditure. The same ought to have been capitalized.

6 We have heard rival submissions and gone through the material available on record. The only dispute which is raised by the assessee is regarding treatment of repair & maintenance; and store and space expenses, whether such expenditure is capital or revenue. One of the tests whether such expenditure is capital or revenue is of enduring benefit. The assessee is required to demonstrate that the expenses have been claimed for a routine up keep of building and plant & machinery. On the other hand, revenue has to rebut such claim by furnishing credible evidence. The lower authorities have examined the issue and have given finding against the assessee. For the sake of clarity the finding of learned CIT(A) is reproduced as under:

4.3.2 I have considered the assessment order and the submissions of the appellant. From the details of the impugned amounts disallowed under repair & maintenance, the following amounts appear to be capital in nature:

<i>Account name</i>	<i>Date</i>	<i>Vendor name</i>	<i>Amount</i>	<i>Remarks</i>
<i>Repair & maintenance</i>	<i>28.02.2014</i>	<i>Richter Technik Chemic</i>	<i>8,34,900/-</i>	<i>Pump</i>
	<i>06.05.2013</i>	<i>A.A.A.A Construction</i>	<i>3,93,820/-</i>	<i>Fabrication job work at NICL for SRU plant</i>
	<i>31.10.2013</i>	<i>New Feb Engg.</i>	<i>4,00,000/-</i>	<i>Hydraulic power pack system replaced</i>
	<i>09.08.2013</i>	<i>Jalaram Enterprises</i>	<i>3,81,755/-</i>	<i>Brick flooring at new useable storage yard.</i>
	<i>09.12.2013</i>	<i>Jalaram Enterprises</i>	<i>2,77,991/-</i>	<i>Civil work for new room extension otla</i>
	<i>13.01.2014</i>	<i>Nagar Palica Valsad</i>	<i>2,50,000/-</i>	<i>For road from NHS to water works</i>
	<i>28.11.2013</i>	<i>Jalaram Enterprises</i>	<i>2,31,161/-</i>	<i>Civil work and electrification for covered shed</i>
		<i>Total</i>	<i>27,69,627/-</i>	

4.3.3 Further, from the details regarding store & spare consumed amounting to Rs.23,50,784/-, the following items appear to be capital in nature:

<i>Account name</i>	<i>Date</i>	<i>Vendor name</i>	<i>Amount</i>	<i>Remarks</i>
<i>Store and spare expenses</i>	<i>31.07.2013</i>	<i>Shivam Sundram Engg. Tech P. Ltd.</i>	<i>4,35,750/-</i>	<i>Supply of complete rotor machine</i>
	<i>31.01.2014</i>	<i>Remi Plant Process And Machinery Ltd.</i>	<i>4,07,635/-</i>	<i>5HP top energy agitator</i>
	<i>30.11.2013</i>	<i>Aquatech Services</i>	<i>3,00,000/-</i>	<i>High temp. heat exchange</i>
	<i>30.09.2013</i>	<i>QVC Eqpt. Chemical</i>	<i>1,93,159/-</i>	<i>Complete centigugal pump with SS304</i>
	<i>17.10.2013</i>	<i>QVC Eqpt. Chemical</i>	<i>1,93,159/-</i>	<i>Complete centigugal pump with SS base f</i>
	<i>18.06.2013</i>	<i>Satyam Enterprises</i>	<i>1,46,606/-</i>	<i>Induction heater TMBH</i>
	<i>01.04.2013</i>	<i>Narmada Engg. And Fabricator</i>	<i>71,875/-</i>	<i>Machine and supply of SS304 roller</i>
		<i>Total</i>	<i>17,48,184/-</i>	

4.3.4 Hence, the expenses aggregating to Rs. 27,69,627/- on account of repair & maintenance and Rs.17,48,184/- on account of store & spare consumed are capitalized and depreciation @ 15% is to be allowed on the same. Ground of appeal No.3 is partly allowed.”

6.1 The contention of the assessee is that the expenditure was incurred to maintain the upkeep of the existing assets. No new asset came into existence by such repairs. In the case of CIT Vs. Madras Auto Service (P) Ltd. (SC), the Hon’ble Apex Court has reiterated the test as laid by the Hon’ble Supreme Court in the case of Assam Bengal Cement Co. Ltd. v. CIT (1955) 27 ITR 34, which is reproduced as under:

“1. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment.

2. Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade... If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether.

3. Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital.”

6.2 Looking to the nature of expenditure made by the assessee it is seen that there are replacement of the entire components and laying of roads etc. Therefore, in our considered view the AO ought to have verified the correctness of the claim that it is purely for the routine upkeep of building and plant & machinery and not for major repairs which brought enduring benefit to the assessee. Thus, in the absence of clear finding about the nature and extent of repairs treating the expenditure as capital is not justified. However, it is clarified that in respect of repairs made on road, such expenditure would be allowable since the assessee is not the owner of roads, outside its premises. We, therefore, set aside the impugned

order and restore the issue to the file of AO for verification of the correctness of the claim of the assessee. Ground is allowed for statistical purpose.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 20.02.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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ASSISTANT REGISTRAR
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