

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI GEORGE GEORGE K., VP
AND SHRI INTURI RAMA RAO, AM**

**ITA No. 918/Coch/2024
Assessment Year: 2007-08**

The Kerala Minerals and Metals Ltd. Appellant
Sankaramangalam, Chavara, Kollam 691583
[PAN: AA ACT8118R]

vs.

Asst. Commissioner of Income Tax Respondent
Circle - 1, Kollam

Appellant by: Shri Rajeev R., CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 13.05.2025
Date of Pronouncement: 16.05.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the orders of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 12.09.2024 for Assessment Year (AY) 2007-08.

2. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is a Kerala Government undertaking engaged in the business of production of Titanium Dioxide. The return of income for AY 2007-08 was filed declaring Nil income. Against the said return of

income, the assessment was completed by the ACIT, Circle -1, Kollam (hereinafter called "the AO") vide order dated 21.12.2010 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) after making disallowance on account of royalty and addition on account of notional interest and disallowance of cost of replacing Rotary Calciner held to be capital. The assessment order was challenged before the CIT(A), who vide the impugned order dated 12.09.2010 confirmed the disallowance. On further appeal before the Tribunal, the Tribunal vide order dated 27.07.2012 in ITA No. 685/Coch/2010 for AY 2007-08 deleted the addition on account of royalty and notional interest following its earlier order for AY 2002-03. However, the issue of addition on account of disallowance of expenditure incurred on replacement of Rotary Calciner was restored to the file of the AO in light of the decision of the Hon'ble Supreme Court in the case of Saravana Spinning Mills P. Ltd. 293 ITR 201. The relevant part of the findings of Tribunal is as follows:

“7. The assessee has taken one more ground for the assessment year 2007-08 with regard to cost of replacement of Calciner to the extent of Rs.94,80,000. The assessee claimed the expenditure as revenue in nature. According to the ld. representative, it is only in the nature of current repair to maintain the machinery. However, the lower authorities have not examined the claim of the assessee in the light of principles laid down by the Apex Court in the case of Saravana Spinning Mills P Ltd 293 ITR 201. This 4 ITA Nos. 684 & 685/Coch/2010 Tribunal find that the replacement said to be made by the assessee has to be examined in the light of law laid down by the apex court in the case of Saravana Spinning

Mills P Ltd (supra). Since the matter has not been examined by the lower authority in the light of judgment of the Apex Court in the case of Saravana Spinning Mills P Ltd (supra) we are of the opinion that the matter needs to be examined by the assessing officer. Accordingly, the orders of the lower authorities are set aside and the issue of deduction for cost of replacement of Calciner amounting to Rs.94,80,000 is remitted back to the file of the assessing officer. The assessing officer shall re-examine the issue in the light of the judgment of the Apex court in the case of Saravana Spinning Mills P Ltd (supra) and in accordance with law after giving reasonable opportunity to the assessee.”

3. Pursuant to the order of this Tribunal the AO passed consequential order dated 20.05.2016 reiterating the addition made in the original assessment by holding that it was a case of replacement of old machinery.

4. Being aggrieved, an appeal was filed before the CIT(A). who vide the impugned order confirmed the action of the AO.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. The learned counsel for the assessee submitted that the expenditure incurred on replacement of part of machinery constitute revenue expenditure. The expenditure had not resulted in enhanced production capacity, therefore, the same should be allowed as revenue expenditure placing reliance of the decision of the Hon'ble Madras High Court in the case of CIT v. Ramco Cements Ltd. [2025] 173 taxmann.com 226 (Madras).

7. On the other hand, the learned Sr. DR referring to the order of the AO submits that all the major part of the Rotary Calciner plant was replaced. It is nothing but replacement of Rotary Calciner. Therefore, the ratio of the judgement in the case of Saravana Spinning Mills P. Ltd. (supra) is squarely application and no interference is called for in the orders of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. The issue that arises for our determination is whether the CIT(A) was right in holding that the expenditure incurred on replacement of part of Rotary Calciner is in the nature of capital expenditure. The factual submission on the nature of the expenditure is extracted by the AO in his order. It would be clear that the expenditure is incurred on part of the machinery called Rotary Calciner. As a result of this expenditure there is no increase in the production capacity and this part cannot perform any function independently. These facts remained uncontroverted by the Department. In identical circumstances the coordinate bench of this Tribunal in the case of *Jaya Hind Industries Ltd. v. DCIT* [2021] 124 taxmann.com 265 (Pune-Trib) to which the AM is the author held as follows: -

“7. No doubt the Hon’ble Supreme Court in the case of Sarvana Spinning Mills Ltd. (supra) categorically held that the expenditure incurred by the assessee towards replacement of machinery with new machinery constitutes a capital expenditure. Even the Hon’ble Supreme Court in the case of CIT vs. Sri Mangayarkarasi Mills P. Ltd, 315 ITR 114

held that each machinery which functions independently should be treated as such not as a mere part of any composite machinery of the plant. The said decisions had been considered by the Hon'ble Madras High Court in the case of Elgi Equipments Ltd. vs. JCIT, 120 taxmann.com 142 and laid down the following principles :-

“17. A careful look at the above decisions would show that though different tests had been formulated by Courts, the application of those tests had posed lot of difficulties, depending upon the facts and circumstances of each case.

This is why the Supreme Court pointed out in Saravana Spinning Mills that the answer to the question would depend upon the facts and circumstances of each case. Therefore, we shall now get back to the facts of the case.

20. On the basis of the nature of the repairs and replacement carried out by the assessee to the boiler as well as to BWE, it is contended by Mr.Vijayaraghavan, learned counsel for the assessee that the expression "current repairs" denotes the repairs for the purpose of preserving or maintaining an already existing asset. It does not bring about a new asset into existence, nor does it give a new or different advantage. Therefore, he contends that the test of improvement or advantage is not relevant to determine whether the repair was current repair or not. It is his further contention that the magnitude of the expenditure cannot also determine whether something is current repair or not.

21. In order to test the correctness of the above contention, it is necessary to have a look at the provisions of Sections 31 and 37.

22. Under Section 31, the amount paid on account of current repairs to plant or furniture used for the purpose of business or profession shall be allowed as deduction. But, the Explanation to Section 31 qualifies the general rule by stating that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.

23. Though the Act defines the expression "income", it does not define either the expression "expenditure" or the expression "repairs or current repairs". However, several heads of expenditure are separately dealt with under Sections 35 and 35A to 35E.

24. Section 37(1) states that any expenditure laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". But, Section 37 (1) excludes three items of expenditure. They are (i) expenditure of the nature described in Sections 30 to 36, (ii) expenditure in the nature of capital expenditure, and (iii) expenditure in the nature of personal expenses of the assessee.

25. Therefore, if an item of expenditure falls within any of the categories indicated in Sections 30 to 36, the same is entitled to deduction as per the provisions of those Sections. But, any expenditure which does not fall within the scope of Sections 30 to 36, but which may still qualify while computing the income chargeable under the head "Profits and gains of business or profession", will be covered by Section 37(1).

26. But, what is important to note is that under both provisions, namely Section 31 as well as Section 37(1), capital expenditure is excluded. If an amount paid on account of current repairs is in the nature of capital expenditure, Section 31 cannot be invoked. Similarly, Section 37(1) cannot also be invoked.

31. On the contention of Mr.T.Ravikumar, learned Standing Counsel that the assessee originally capitalised the expenditure, but reversed the same later, we have to point out that there cannot be any estoppel in such cases. The question whether a particular expenditure would fall within the definition of the expression "current repairs" under Section 31(i) or not, does not depend upon what the assessee did or did not. After all if the expenditure is capitalised, the assessee takes the benefit of depreciation. If the expenditure is treated as

revenue expenditure, it is either taken as an expenditure under Section 37(1) for computing income chargeable under the head "Profits and gains of business or profession" or treated as "current repairs" entitled to deduction under Section 31(i). Therefore, the contention of the learned Standing Counsel cannot be accepted."

8. Even in recent judgement of the Hon'ble Madras High Court in the case of Elgi Equipments Ltd. vs. JCIT, 120 taxmann.com 142 held that the expenditure incurred towards replacement of a part of the machinery can be allowed as a deduction. Even the Hon'ble Supreme Court in the subsequent decision in the case of CIT Vs. Ramaraju Surgical Cotton Mills, 294 ITR 328 had laid down the proposition that the expenditure incurred on replacement of a part of machinery can be allowed as a revenue deduction in case there is no increase of productivity or capacity as result of this expenditure. Keeping the above legal principles in mind, we examine the facts of the present case, as noticed by us supra that there is no increase of productivity or capacity as result of this expenditure and the fact that it is only cost of the Gripper which is a part of robotic arms forming part of high pressure die casting machines. Thus, it is clearly that it cannot function independently. The decision of the Hon'ble Supreme Court in the case of Sarvana Spinning Mills Ltd. (supra) was with respect to the deduction u/s 31 of the Act and also based on the finding of fact that in textile mill each machine in a segment of a textile mill has an independent role to play in the mill and the output of each division is different from the other. Noticing these distinguishing facts, the Hon'ble Supreme Court in the case of Ramaraju Surgical Cotton Mills (supra) held that the ratio of decision in the case of Sarvana Spinning Mills Ltd. (supra) not applicable, therefore, restored the matter to the CIT(A) to dispose of the matter in accordance with law. Similarly, the Hon'ble Supreme Court in series of subsequent judgments set-aside the issue to the lower authorities to find out the relevant facts and render the decision in accordance with law without accepting the ratio

of laid down in the case of Sarvana Spinning Mills Ltd. (supra). Reliance can be placed on the following decisions:-

- (i) CIT vs. McDowell and Co. Ltd., 314 ITR 177;*
- (ii) CIT vs. McDowell and Co. Ltd., 314 ITR 180;*
- (iii) CIT vs. Udaipur Distillery Co. Ltd., 314 ITR 188; and,*
- (iv) Shreyans Industries Ltd. vs. CIT, 314 ITR 302.*

9. Therefore, it is clear that the ratio of the decision of the Hon'ble Supreme Court in the case of Sarvana Spinning Mills Ltd. (supra) cannot be applicable to the facts of the present case and undisputedly the claim for deduction is not u/s 31 but u/s 37 of the Act.”

9. Recently the Hon'ble Madras High Court in the case of CIT v. Ramco Cements Ltd. [2025] 173 taxmann.com 226 (Mad.) also followed the same reasoning. In view of this legal position we are of the considered opinion that the expenditure cannot be held to be capital and may be allowed as revenue expenditure. Accordingly, we direct the AO to treat it as revenue expenditure.

10. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 16th May, 2025.

Sd/-
GEORGE GEORGE K.
VICE PRESIDENT

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 16th May, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin