

*आयकर अपीलीय अधिकरण, हैदराबाद पीठ*  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**श्री विजय पाल राव, उपाध्यक्ष एवं**  
**श्री मंजूनाथा जी, लेखा सदस्य के समक्ष ।**  
**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND**  
**SHRI MANJUNATHA G, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA Nos.1336 to 1340/Hyd/2025**  
(निर्धारण वर्ष / Assessment Years : 2013-14 to 2015-16,  
2017-18 & 2018-19)

<b>M/s. Nuziveedu Swathi Coastal Consortium, Hyderabad.</b> <b>PAN: AAAAN3839R</b>	<b>Vs.</b>	<b>Asst. Commissioner of Income Tax,</b> <b>Circle 6(1), Hyderabad.</b>
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate.	
राजस्व द्वारा / Revenue by:	Smt. U. Mini Chandran, CIT-DR	
सुनवाई की तारीख / Date of hearing:	27/11/2025	
घोषणा की तारीख / Pronouncement:	09/01/2026	

**आदेश/ORDER**

**PER MANJUNATHA G, A.M. :**

These five appeals filed by the assessee are directed against separate but identical orders passed by the Learned Commissioner of Income Tax (Appeals), Delhi ("Ld. CIT(A)"), all dated 11.06.2025 and pertains to the Assessment Years 2013-14 to 2015-16, 2017-18 & 2018-19 respectively. Since the facts are

identical and issues are common, for the sake of convenience and brevity, these appeals are heard together and are being disposed by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all the assessment years. Therefore, for the sake of brevity, grounds of appeal for A.Y. 2013-14 are reproduced as under :

1. On the facts and in the circumstances, the appellate order passed by Id. NFAC is erroneous and unsustainable on facts and in law.
2. The Id. NFAC erred in sustaining the action of the AO in treating the expenditure on (i) Roller and Structures, (ii) Scrap Rails, (iii) Conveyor Belt and (iv) Track Cross amounting to Rs.7,51,71,282 as capital expenditure, contrary to the nature of expenditure being revenue, and allowing only depreciation on the said expenditure.
3. The findings of the Id. NFAC in this regard in his/her order is factually and legally incorrect and cannot be sustained.

For these and other grounds that may be urged, it is prayed that the appeal may be allowed.

3. The brief facts of the case are that the assessee, M/s. Nuziveedu Swathi Coastal Consortium is a joint venture, engaged

in the business of civil contracts and more particularly executing sub-contracts for main contractor. During the year under consideration, the assessee continued the execution of the sub-contract work of executing an EPC Turnkey Contract i.e. 'Construction of Tunnel including Construction of Head Regulator and Excavation of Approach Channel of Veligonda Project in Prakasam District, Andhra Pradesh. The contract work mainly involves boring of tunnel, erection of segments, laying of conveyer belt, air ventilation ducting & laying of track inside the tunnel, etc. The assessee deployed Tunnel Boring Machine (TBM) for tunnel work and as and when the tunnel work progresses, the assessee was laying railway track, conveyer belt and ventilation ducting. The progress of contract work done by TBM will be measured in terms of meters and billing has been made as per length of the work completed. The rail track system is used for transporting material, segments, tools and for some time removal of debris. Narrow gauge rail tracks are laid temporarily along with channel. Muck cars are pulled by battery or diesel

locomotives. Rails are extended progressively as the TBM advances. The assessee has purchased used railway tracks from railway as scrap rails and same has been installed in the work site for the above purpose. The conveyor structure with belt is to continuously remove excavated material(muck) from the TBM face to the surface. The ventilation ducting is to provide a continuous supply of fresh air to workers and machinery operating within the tunnel and to remove harmful gases, dust, ;diesel fumes and any hazardous substances released during excavation. The expenditure on rail track, conveyor belt and ventilation ducting has been incurred by the assessee year on year depending on the length of the tunnel excavated. The assessee is billing to the main contractor on the basis of channel length which includes the temporary structures created in the work site. The assessee has claimed cost of rollers and structures, railway track, conveyor belt and ventilation ducting as revenue in nature.

4. The case was selected for scrutiny and the assessment has been initially completed u/s. 143(3) of the Act on 24.03.2016 where the Assessing Officer has treated expenditure on construction of railway track, conveyor belt system and ventilation ducting as capital in nature and disallowed as revenue expenditure claimed by the assessee for Rs.7,51,71,282/- and has allowed 15% depreciation on the said expenditure as applicable to plant and machinery. Being aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) in its order dated 20.02.2019 confirmed the action of the Assessing Officer in the case of capitalising the expenditure incurred on construction of railway track and conveyor belt system and allowed the depreciation thereon. The assessee challenged the order of the Ld. CIT(A) by filing appeal before the Tribunal and the ITAT, Hyderabad 'A' Bench vide its combined order dated 26.10.2021 in appeals in ITA Nos.609 to 611 and 1511/Hyd/2019 for the A.Ys 2013-14 to 2018-19 restored the issue to Assessing Officer relating to the issue of capitalising

expenditure incurred on construction of railway track and conveyor belt system to the Assessing Officer for fresh verification.

5. During the second round of proceedings, the Assessing Officer called upon the assessee to file relevant evidences and justify the expenditure incurred for rollers and structures, scrap rails and track, conveyor belt system and ventilation ducting as revenue in nature and also file its objections if any for treatment of said expenditure as capital in nature. In response the assessee submitted that the expenditure incurred for rail track, conveyor belt and ventilation ducting are not capital in nature which gives enduring benefit to the assessee, but used as a consumable in the process of earning income and therefore the same cannot be treated as capital expenditure.

6. The Assessing Officer after considering the relevant submissions and also taking note of the nature of work executed by the assessee (deployment of TBM), rejected the explanation of the assessee and treated expenditure incurred for the above

purpose as capital in nature. The Assessing Officer discussed the issue at length in light of the nature of work carried out by the assessee, the term of contract work, life span of the works or structures created by the assessee and observed that the rail track installed by the assessee in the work site will last for more than one year which gives enduring benefit to the assessee. Further, the conveyor belt fixed by the assessee is also gives enduring benefit for more than one year. Similarly, the ventilation ducting also is in the nature of asset created for the purpose of business which gives enduring benefit for more than one year. Therefore, he held that the expenditure incurred by the assessee for rail track system, conveyor belt and ventilation ducting cannot be treated as revenue in nature. Thus, he disallowed the expenditure claimed by the assessee and allowed 15% depreciation on the said expenditure and the balance amount of Rs.6,55,60,180/- has been added to the total income of the assessee. The relevant findings of the Assessing Officer are as under :

9. The submissions of the assessee are perused but not acceptable. The utilization of the items or machinery cannot change the character. It is submitted by the

assessee that the main machine Tunnel Boring Machine itself is dismantled and buried in the tunnel and hence the expenditure incurred for purchase of rail track etc. are not assets in nature. This type of correlation is not correct. But, after what period the TBM was dismantled is a question. As seen from the information on record, it is dismantled after usage of 7 years (2008 to 2015). The argument of the assessee is baseless as the depreciable asset is such an asset having useful life for more than 1 year, whether it is used in the business or not.

9.1 The definition of plant is inclusive and not exhaustive, the word 'plant' includes anything which can be comprehended within its ordinary meaning, such as fixtures, machinery, tools, apparatus or appliances etc. necessary to carry on any trade or mechanical business or any mechanical operation or process the machinery apparatus or fixtures by which a business is carried on or the fixtures and tools necessary to carry on any trade on mechanical business.

9.2 As per the information by way of paper news submitted by the assessee it had brought a high level machine "Tunnel Boring Machine (TBM) in the year 2008 for an amount of Rs. 128 crores and used for drilling the work. And rail track is used for the movement of the machine TBM. Therefore, as per the definition of the plant, the machinery apparatus or fixtures by which a business is carried on or the fixtures and tools necessary to carry on such business is also be included in the definition of the 'Plant'.

9.3 Further, the rails so purchased are used for the purpose of mode of movement for goods as well as personnel as the tunnel progresses and also for the excavation of the material. The Rails which are purchased for the purposes of laying down the Rail Tracks will be in use for a period of more than 1 year. In the assessee's case the contract work was commenced in the year 2007 and still going on till the financial year relevant to the A.Y. 2015-16. Therefore, the usage of Rails is not for a short period of time and the Rails are in the form of capital asset and is not a consumable as such.

9.4 The purchase of same material repeatedly cannot change the character of the item. The assessee has purchased the Rail racks, fish plates, conveyor belt, Ventilation ducting periodically depending on the progress of the work of tunnelling. The project as it has been going to last for more than 15 years and the cost of conveyer Belt increase with the increase in the length of tunnel and the belt installed at the beginning continues to be used for all the 15 years. Similarly, the rail tracks

are also using for last 15 years. The statement of the assessee that there are repeated repairs to these items cannot change the character of the plant / machinery. The conveyer belt and the rail tracks are the integral part of the construction of tunnel and also an essential structure which is required for movement. Further, the assessee's statement that it had purchased second hand material from the Railways and hence it is revenue expenditure is also not acceptable. Though the item purchased is second hand but the usage is more than 1 year. Further, the assessee also could not provide any evidence to establish that the rail tracks and other items in question are used for only a brief period so as to fall in the 'definition' of consumables. Therefore, this statement is also not changed the character of the items.

9.5 Assessee's nature of work is excavation. For executing the work, the assessee has required to purchase rail track and conveyor belt, ventilation ducting and fish plates. The rail track is used for the purpose of mobilizing men and material to the tunnel to carrying out the work, while the conveyor belt system is used for the purpose of transporting the excavated material / debris from the tunnel and ventilation ducting is used for pumping oxygen to inside tunnel. All these items are used as apparatus or fixtures to the machinery which an excavation work can be carried on.

9.6 According to the definition, machinery need not be self contained unit capable of being put to use by itself and may be part of a bigger machinery. In other words, machinery would not be ceased to be machinery simply because it is a part of manufacturing plant.

9.7 The costs for maintaining and repairing the assets that generate revenue are revenue expenditures because these costs support the business's ongoing operations and have no impact on the asset's lifespan. Therefore, the expenditure for repairing and maintenance are recurring in nature. These expenditures are upkeep of capital assets in their usual condition. These the expenditure incurred towards repairs are allowed in the present case.

9.8 Further, it is seen from the depreciation schedule filed along with the return of income that the assessee has claimed depreciation @ 15% on 'Tunnel Boring Machine'. Besides, TBM, the Rail tracks, conveyor belt, ventilation ducting and fish plates are all utilising in excavation work. Therefore, these items are nothing but apparatus or fixtures to the machinery, through which an excavation work can be

carried on. Therefore, the expenditure incurred towards acquisition of the assets viz Rail track, Rollers and Structures, conveyor Belt, ventilation ducting and Fish plates needs to be capitalized:

9.9 The contention of the assessee that while passing the assessment order for the A.Y. 2016-17, the issue of allowing as revenue expenditure is considered and no addition has been made is not acceptable. Each assessment year is distinct and separate. The principles of res judicata are also unknown to the taxation proceedings.

7. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has reiterated the submissions made before the Assessing Officer and claimed that the Assessing Officer was erred in treating expenditure incurred for railway track, conveyor belt and ventilation ducting as capital in nature and allowed depreciation, even though the above expenditure incurred by the assessee is revenue in nature, site specific, temporary and never last long exceeding the project period. Further, the assessee submitted before the Ld. CIT(A) that railway siding installed by the assessee in the work site is site specific and not a general railway track so as to treat it as capital asset. Similarly, the conveyor belt and ventilation duct have been installed in the work site solely for the purpose of transporting excavated material (muck), removal

of debris and also to provide oxygen in the tunnel. Before the Ld. CIT(A), the assessee submitted that these are in the nature of consumables used in the execution of contract and the same are billed to the contractors. Further, the assessee submitted before the Ld. CIT(A) that once the tunnel work is completed, the railway siding, conveyor belt and ventilation ducting becomes obsolete and unusable and therefore, the same cannot be treated as capital in nature.

8. The Ld. CIT(A) after considering the submissions of the assessee and also taking note of reasons given by the Assessing Officer to treat the expenditure incurred for railway track, conveyor belt and ventilation duct as capital in nature rejected the explanation of the assessee and upheld the reasons given by the Assessing Officer on the ground that, the expenditure incurred by the assessee for the above purpose is capital in nature which gives enduring benefit to the assessee going by the facts on record and the nature of assets created by the assessee. Further, the Ld. CIT(A) held that the assessee itself has treated

TBM as machinery and claimed depreciation @ 15% and once the assessee has created TBM as plant and machinery, then the aforesaid fixtures created for the purpose of deployment of TBM machine can only be treated as plant and machinery or tools and required to fix the above machine and thus, the same is in the nature of capital asset which gives enduring benefit to the assessee. Therefore, he held that the Assessing Officer has rightly treated the expenditure incurred for rollers and structures, railway track, conveyor belt and ventilation ducting as capital in nature and allowed depreciation as per law. Thus, rejected the explanation of the assessee and upheld the additions made by the Assessing Officer. The relevant findings of the Ld. CIT(A) are as under :

4.1 I have gone through the case record submission of the appellant and other documents. The case has meandered through a series of litigation and has finally come at this stage. The earlier assessment has gone through the stage of 1st and 2<sup>nd</sup> appeal and the present order was passed u/s 143(3) r.w.s 254 on 21.01.2022, as the Hon'ble ITAT had set aside the assessment on certain points.

4.2 **Ground No. 1 & 2** :- ~~Vide these grounds~~, appellant has challenged the addition made by the AO by Capitalizing the following expenses, claimed as revenue by the appellant. The AO had considered these expenses to be capital in nature and has disallowed the deduction on the same, treating it as capital expenditure and there after allowing depreciation at the rate of 15%, treating them as plant and machinery:-

	<b>Total Expenses</b>	<b>Depreciation Allowed</b>
Roller and Structure -	Rs. 69,05,771/-	Rs. 9,18,456/-
Scrap Rails -	Rs. 1,40,03,062/-	Rs. 21,00,459/-
Conveyor Belt -	Rs. 4,61,20,842/-	Rs. 53,71,008/-
Track Cross -	Rs. 81,41,607/-	Rs. 12,21,241/-
<b>Total</b> -	<b>Rs. 7,51,71,282/-</b>	<b>Rs. 96,11,164/-</b>

4.2.1 Thus, the total expenses of Rs. 7,51,71,282/- was treated as capital expenses by the AO and a depreciation of Rs. 96,11,164/- was allowed at the rate of 15% thereby leading to an addition of Rs. 6,55,60,118/-.

4.2.2 The AO had rejected the contention of the appellant that the above expenses are in the nature of current repairs and in the nature of consumables. The AO had concluded that the appellant has been using these assets for a long period of time and hence, they have an enduring effect and hence have to be treated as capital in nature.

4.2.3 In its written submission, the appellant has raised certain objections as to why the stand of the AO is erroneous and as to why the above expenses should be allowed as revenue expenses, as claimed by the appellant. The appellant states that it was involved in the execution of the sub contract work, for EPC Turnkey contract which involved boring of tunnel, erection of segments, laying of conveyor belt, air ventilation ducting and laying of track inside the tunnel. The appellant also explains that the above works keeps on expending and lengthening as the contract of boring of the tunnel progresses. As more meters of tunnel is excavated, it involves cutting of soil, removal of debris, extension of Ventilation Duct, Conveyor Belt and Rail Track. The appellant has further explained each of the above four items and the purpose for

which the same are being used. The appellant explains that rail track system is used for transporting material, segments, tools, and also for removal of debris. The Conveyor Structure with Belts is to continuously remove excavated material (muck) from the TBM face to the surface. The Ventilation Ducting is to provide a continuous supply of fresh air to workers and machinery operating within the tunnel and to remove harmful gases, dust, diesel fumes and any hazardous substances released during excavation. The appellant has given various reasons as to why the above expenses on the concerned items should be treated as revenue expenses. The reasons given by the appellant are being discussed one by one, in the succeeding paragraphs.

4.2.4 It is claimed that the expenses on the above items were incurred, year on year, depending on length of the tunnel excavated. It is further stated that the scrap rail and tracks are meant to be kept abandoned in the tunnel as part of the project. The above argument of the appellant has no relevance in deciding as to whether the same is of revenue nature or capital. It is obvious that as the work of excavation of tunnel proceeds further, the length of rollers, scrap rails, conveyor belt, tracks etc. will also increase and the above expenses shall be incurred and added on a year to year basis. The mere fact that these expenses were incurred year on year has no bearing on deciding the issue of their enduring nature or otherwise. Notwithstanding the fact that more and more meters of above items were added with the progress of the

tunnel excavation work, the fact cannot be lost sight of that the rails, conveyor belts etc. laid in the initial part of the tunnel continued to be put to use for the entire length of time when the project work continued. In other words, all these items which were laid in the first few meters of the tunnel were continuously used till the last meter of the tunnel was excavated and the project was completed. Thus, the element of enduring value to the appellant, determined by the AO and which is the basis of these additions, cannot be negated. Hence, this argument forwarded by the appellant has no bearing on the decision on this matter.

4.2.5 The next argument put forth by the appellant is that the conveyor belt alongwith roller and structures are only temporary structure and get damaged frequently and require replacement. Hence, the appellant claims that belts and rollers are only consumables items and there is no enduring benefit. The above statement of the appellant is devoid of merits. It is relevant to note here is that the same issue has been the subject matter of disagreement between the department and the appellant right from the time of passage of the first assessment order u/s 143(3) dated 14.12.2017 till date. The appellant has been more or less claiming the same arguments till date in multiple stages of hearing right from the first assessment order to the present stage of litigation, but has failed to produce a single paper of evidence to substantiate the case of frequent damage at replacement thereof. Appellant has also failed to bring out any evidence of the minor damages to these structures as claimed by it. Thus, the above argument of the appellant is also rejected.

4.2.6 It is claimed that the ventilation ducting is a temporary facility requiring frequent repairs and replacement of the damaged ducting. Again, this argument is also irrelevant in deciding the issue at hand that whether ventilation ducting has an enduring benefit or not. Merely because the ducting needs repairs and replacement on a time to time basis, is not a criterion to decide the nature of enduring use. All plants and machinery do require some repairs and replacement of the damaged parts. Mere repair and replacement of the damaged parts does not convert a plant or machinery of a enduring nature into consumables. Most of the machines or plants by their very nature require replacement of parts and repair during their effective period of use and does not per-se change their nature or changes the enduring nature of their utility. The ventilation ducting is required for movement of air into the tunnel to keep the air breathable and safe. The ventilation ducting is used only for movement of air and apparently there is little scope of too much of wear and tear or damage by movement of air. The appellant has also not been able to bring out any material evidence to suggest otherwise in this regard. As stated already the work of excavation of tunnel cannot proceed without breathable air and hence, the ducting laid down once has to be used for the entire length of the project, which incidentally in this case is 15 years as admitted by the appellant itself. Accordingly, this argument

of the appellant is also without substance.

4.2.7 The appellant has claimed that the ventilation ducting does not have any resale value and they have to be abandoned at the site itself and has enclosed pictures of certain abandoned items to prove its point. It is claimed that the pictures enclosed are that of rollers, conveyor belts and ventilation ducting abandoned at the site. The above point is also immaterial again to determine the issue that whether the above items are of enduring use to the appellant or not. The question here is not that whether the above items were of any usefulness to the appellant after the completion of project or not or whether the appellant after completion of this project further used them or not. The relevant question here is whether the items in question were used just for one year or whether they were used for the entire duration of the project. Undoubtedly, these materials were used for the project right from the time when they were first laid inside the tunnel till the point of completion of the excavation work. Incidentally, in the very next paragraph of its submission, the appellant has stated that the project started in the FY 2007-08 and was completed during the FY 2018-19. Thus, as per the appellant's own submission the project continued for more than 11 years and hence, these assets which continued to be used from the date of being laid till the completion of the tunnel cannot but be taken as of enduring value. The appellant's argument, albeit unsubstantiated and even if accepted at face value, that the items in question were abandoned at the project site after the completion of the project, has no bearing on the issue at hand here. Accordingly, this ground is also rejected.

4.2.8 The appellant further claims *Further, it is to inform you that the above project undertaken by the appellant was completed and the dismantling of the Tunnel Boring Machine (TBM) is carried out inside the tunnel itself, since the machine cannot be towed outside of the other side. Since the main machine of TBM itself is dismantled and buried in the tunnel, the capitalization of above expenditure does not have any meaning and all the above expenditure are part of the project only and nothing has been retrieved at the end of the project and hence there is no enduring benefit whatsoever to the appellant."*

4.2.9 In the above sentences, the appellant has claimed that the Tunnel Boring Machine (TBM) was dismantled in the tunnel and was not retrieved at the end of the project. But it is paradoxical to see then the appellant on one hand had claimed depreciation @ 15% on TBM treating it as a machinery "as stated in para 9.8 of the assessment order", which it claims to have "dismantled in the tunnel and was not retrieved at the end of the project" but claims the above items as revenue expenditure on the same analogy that they were left as scrap and abandoned at the site itself.

4.2.10 Finally, the appellant has claimed that the above items have been treated by the AO as revenue expenses and no disallowance in this regard was made for AY 2016-17. The above point was raised by the appellant in the course of assessment also and was rightly answered by the AO that the conclusions drawn for AY 2016-17 cannot be claimed as a precedent for other assessment years as it is well established that the principles of Res-judicata is not applicable in the case of taxation proceedings and each AY is treated as a separate proceeding. I agree with the stand taken by the AO and hence this ground of appeal is also devoid of any merit. **Accordingly, these grounds of appeal are dismissed.**

9. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before the Tribunal.

10. The learned counsel for the assessee, Sri A.V. Raghuram, Advocate submitted that the Ld. CIT(A) erred in sustaining the additions made by the Assessing Officer towards disallowance of revenue expenditure incurred on roller and structures, scrap

rails, railway track, conveyer belt and ventilation ducting as capital in nature without appreciating the fact that the nature of expenditure being revenue in nature, site specific, temporary and non-enduring benefit beyond the life of the specific contract. The learned counsel for the assessee further submitted that these are short term capital goods and life span is very less. The Ld. AR further submitted that the assessee has installed used railway track which is suitable to the site conditions mainly for the purpose of movement of workers and removal of debris from the work site. The conveyer belt is fixed to continuously remove excavated material (muck) from the TBM face to the surface. He further submitted that, because of its usage in the work site, it gets damaged very frequently and the assessee needs to replace the belt. The assessee has fixed ventilation ducting to provide continuous fresh air and oxygen to workers operating within the tunnel. The asset installed by the assessee in the work site is site specific and temporary in nature and non-enduring and therefore, in the absence of any asset which came into existence

and gives enduring benefit, treatment of said expenditure as capital in nature is contrary to law. The learned counsel for the assessee further referring to the decisions of Hon'ble Supreme Court in the case of Empire Jute Co. Ltd. Vs. CIT (1980) 124 ITR 01 (SC) submitted that a specific asset is a capital expenditure or revenue expenditure would have to be determined having regard to the nature of the transactions and the relevant factors. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer. Therefore in order to decide whether a particular expenditure is capital or revenue, the nature of work executed by the parties and the asset created in the business should be considered. The Ld. AR submitted that if we go by the facts of the present case, the assessee has created temporary structures in the course of its business and the same are in the nature of consumables and not a fixed asset and not created for the purpose of business, therefore, the Assessing Officer was erred

in treating the expenditure incurred for the above purpose as capital in nature. The Ld. CIT(A) without appreciating the relevant facts, simply upheld the reasons given by the Assessing Officer. Therefore, he prayed that the additions made by the Assessing Officer should be deleted. In this regard, he relied upon the decisions of Hon'ble Supreme Court in the case of CIT Vs. Madras Auto Service (P) Ltd. (1998) 233 ITR 468 (SC). The learned counsel also relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Associated Cement Companies Ltd. (1988) 172 ITR 257 (SC).

11. The learned CIT-DR Smt. U Mini Chandran, on the other hand, supporting the orders of Ld. CIT(A) submitted that, whether the expenditure incurred by the assessee is capital in nature or revenue in nature must be decided based on the nature of asset created by the assessee, but not based on the nature of business carried out by the assessee. She submitted that the assessee has installed railway track which is not a scrap rails or a temporary one. The railway track gives enduring benefit to the

assessee which lasts for more than 7 to 8 years as claimed by the assessee itself. She further submitted that the assessee has also installed conveyor belt and ventilation ducting which are permanent in nature and gives enduring benefit for more than one year. Further she submitted that, as per the GST Act, section 17 defines conveyor belt as a plant and machinery. The Ld. DR further submitted that, since the assessee was carried out the tunnel work for more than 15 years and installed the railway track, conveyor belt and ventilation ducting which gives enduring benefit to the assessee, the Assessing Officer has rightly treated the expenditure incurred for the above purpose as capital in nature. She submitted that the Ld. CIT(A) after considering the relevant facts, has rightly upheld the additions made by the Assessing Officer. Therefore, she submitted that the order of the Ld. CIT(A) should be upheld and appeal of the assessee should be dismissed.

12. We have heard both the parties, perused the material available on record and had gone through the orders of

authorities below. We have also carefully considered the relevant case laws relied upon by the learned counsel for the assessee in support of his arguments. There is no dispute with regard to fact that the assessee is engaged in the business of execution of the sub-contract work of executing an EPC Turnkey Contract i.e. 'Construction of Tunnel including Construction of Head Regulator and Excavation of Approach Channel of Veligonda Project in Prakasam District, Andhra Pradesh. The contract work mainly involves boring of tunnel, erection of segments, laying of conveyer belt, air ventilation ducting & laying of track inside the tunnel, etc. The railway track system is used for transporting material and for sometime removal of debris. The assessee has purchased used narrow gauge railway track from railways and laid railway track temporarily along with the tunnel invert for movement of material and removal of debris. The assessee has put conveyor belt to remove excavated material (muck) from the TBM face to the surface. Similarly, the ventilation ducting is provided for continuous supply of fresh air

and oxygen to workers inside the tunnel. The assessee has furnished relevant details of the works carried out at the site which are available in the paper book filed by the assessee. Upon perusal of relevant details and also the nature of work executed by the assessee, in our considered view, the expenditure incurred for the purpose of rollers and structures, railway track, conveyor belt and ventilation ducting cannot be treated as capital expenditure which gives enduring benefit to the assessee. Further, the expenditure incurred by the assessee are fundamentally temporary, site specific and non-enduring beyond the life of the specific contract. Therefore, in our considered view, the true test for determining whether the expenditure is revenue or capital, hinges on the nature of an advantage obtained. If the expenditure brings into existence an asset or an advantage of an enduring nature for core business structure of the assessee, it is capital in nature. Conversely, if it is incurred for a smooth and efficient running of the existing business structure or to facilitate the current trade operations, then it is

revenue in nature. In the instant case, the railway tracks and conveyor belts were not acquired to create a permanent asset for the business as a whole, nor did they expand the core capacity i.e. the ability to execute more contracts for the assessee. They were merely tools of the trade, acquired pro-tempore and used exclusively and necessarily for the execution of a single, specific contract of tunnelling work. It is not the case of the Assessing Officer that railway track installed by the assessee is a permanent structure which can be used in general like a railway track installed by the Indian Railways. The Assessing Officer is only on the point that the railway track installed by the assessee are not temporary, mainly because of the life of the railway track. In our considered view, the railway track installed by the assessee has to be considered in light of the nature of contract executed by the assessee and if we consider the nature of contract, the assessee is executing a civil contract work for tunnelling in a site provided by the government and installed temporary railway track for movement of material and removal of

debris. Once the tunnelling work is completed, the assessee has to either remove the railway track and leave it there as it is, because even if the assessee removes the railway track, it cannot be used for any other site except selling it as a scrap. Therefore, in our considered view, the railway track installed by the assessee in the work site cannot be treated as an asset which gives enduring benefit to the assessee.

13. Coming back to conveyor belt and ventilation ducting. The conveyor structure with belt is fixed to continuously remove excavated material (muck) from the TBM face to the surface. A conveyor belt system supports from inside the TBM back up area to the tunnel or muck pit. The ventilation ducting is provided for continuous supply of fresh air and oxygen to workers and machinery operating workers within the tunnel and also to remove dust and any hazardous substances related to pre-excavation. Because of its repeated use, the conveyor belt system damages very frequently as claimed by the assessee by furnishing relevant pictures which are available in the paper book

where the assessee has left as it is the used conveyor system and from the above it is very clear that it cannot be reused or sold as scrap. Similar is the case with rollers and structures. The ventilation duct is to provide a continuous supply of fresh air to workers and machinery operating within the tunnel and to remove harmful gases, dust, diesel fumes and any hazardous substances released during excavation. It consists of long, flexible ducts, typically made of fabric reinforced plastic. Air is supplied using fans (blowers) from the tunnel entrance or a ventilation shaft. It is purely temporary in nature and suitable for the work site of the assessee and does not give any enduring benefit. As already stated in earlier part of this order, in order to treat an expenditure as revenue or capital, one has to consider the nature of business of the assessee and expenditure from a commercial point of view, what advantage did the assessee get by constructing a railway track or conveyor belt or ventilation duct in a site which belongs to somebody else and spending money for construction. The assessee gets only business

advantage by deploying the above temporary structures in the work site which does not result in any enduring benefit to the assessee. Temporary railway track, conveyor belt and ventilation duct system created by the assessee in the process of boring a tunnel by using a TBM machine cannot be treated as plant and machinery or an asset which gives enduring benefit to the assessee. In our considered view, while dealing with the issue of whether a particular expenditure is capital or revenue, one has to keep in mind whether the outgoing expenditure is so related to the carrying on or the conduct of the business, that it may be regarded as an integral part of the profit earning process and not for acquisition of an asset or a right of a permanent character. The possession of which is a condition of carrying on business, the expenditure may be regarded as revenue expenditure as held by the Hon'ble Supreme Court in the case of Empire Jute Co. Ltd. Vs. CIT (supra). A similar view has been taken by Hon'ble Supreme Court in the case of Bombay Steam Navigation Vs. CIT (1965) 56 ITR 52 (SC). Therefore, in our considered view, the

arguments of the revenue that since the structures created by the assessee last for more than one year and gives enduring benefit and thus, should be treated as capital expenditure, is devoid of merit and cannot be accepted.

14. The assessee has relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Madras Auto Service (P) Ltd. (supra). The Hon'ble Supreme Court has considered an identical issue of capital or revenue expenditure towards expenditure incurred by the assessee for construction of a building on a land which belong to somebody else. The Hon'ble Supreme Court upon considering the nature of business of the assessee and type of assets held as under :

*“ In order to decide whether this expenditure is revenue expenditure or capital expenditure, one has to look at the expenditure from a commercial point of view. What advantage did the assessee get by constructing a building which belonged to somebody else and spending money for such construction? The assessee got a long lease of a newly constructed building suitable to its own business at a very concessional rent. The expenditure, therefore, was made in order to secure a long lease of new and more suitable business premises at a lower rent. In other words, the assessee made substantial savings in monthly rent for a period of 39 years by*

expending these amounts. The saving in expenditure was saving in revenue expenditure in the form of rent. Whatever substitutes for revenue expenditure should normally be considered as revenue expenditure. Moreover, assessee in the present case did not get any capital asset by spending the said amounts. The assessee, therefore, could not have claimed any depreciation. Looking to the nature of the advantage which the assessee obtained in a commercial sense, expenditure appears to be revenue expenditure.

The test for distinguishing between capital expenditure and revenue expenditure in our country was laid down by this Court in Assam Bengal Cement Co. Ltd. v. Commissioner of Income-tax, West Bengal (27 ITR 34). In that case, the appellant-company had acquired from the Government of Assam lease of certain lime-stone quarries for a period of 20 years for the purpose of manufacture of cement. The lessee had, inter alia, agreed to pay an annual sum during the whole period of the lease as a protection fee and in consideration of that payment, the lessor undertook not to grant to any person any lease, permit or prospecting licence for lime-stone. This Court examined tests laid down in various cases for distinguishing between capital expenditure and revenue expenditure. One of the standard tests now in use was laid down in the case of Atherton v. British Insulated and Helsby Cables Ltd. ([1925] 10 Tax. Cases 155). It said : "When an expenditure 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, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capita." Whether by spending the money any advantage of an enduring nature has been obtained or not will depend upon the facts of each case. Moreover, as the above passage itself provides, this test would not apply if there are special circumstances pointing to the contrary. This Court in the above case summarised the tests as follows :(p. 44) :

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.

(underlining ours) Relying upon the second test enumerated above, learned counsel for the appellant has submitted that the assessee got enduring benefit of a capital nature by spending the amount because the assessee obtained a new building for a period of 39 years. The difficulty, however, in the present case, arises from the fact that this building was never to belong to the assessee. Right from inception, the building was of the ownership of the lessor. Therefore, by spending this money, the assessee did not acquire any capital asset. The only advantage which the assessee derived by spending the money was that it got the lease of a new building at a low rent. From the business point of view, therefore, the assessee got the benefit of reduced rent. The High Court has, therefore, rightly considered this as obtaining a business advantage. The expenditure is, therefore, to be treated as revenue expenditure.

Although there are a number of cases dealing with this question, we will limit ourselves to examining a few cases where the assessee, by expending money, created an asset of an enduring nature. However, the asset so created did not belong to the assessee. In such a situation the courts have held that the expenditure was for better carrying on of the business of the assessee and could be allowed as revenue expenditure, looking to the circumstances of each of those cases. Thus in [Lakshmiji Sugar Mills Co. P. Ltd. v. Commissioner of Income-tax, New Delhi](#) (82 ITR 376) the assessee company was carrying on the business of manufacture and sale of sugar. It paid to the Cane Development Council certain amounts by way of contribution for the construction and development of roads between various sugarcane-producing centres and the sugar factories of the assessee. The roads remained the property of the Government. This Court held that the expenditure was not of a capital nature and had to be allowed as an admissible deduction in computing the profits of the assessee's business. The expenditure was incurred for the purpose of facilitating the running of the assessee's motor vehicles and other means employed for transportation of sugarcane to its factories.

In the case of [L.H. Sugar Factory and Oils Mills \(P\) Ltd. v. Commissioner of Income-tax, U.P.](#) (125 ITR 293), the assessee was carrying on the business of manufacture and sale of sugar. It has its factory in U.P. The assessee paid a contribution towards meeting the cost of construction of roads in the area around its factory under a sugarcane development scheme. The question was whether this amount was deductible in computing the assessee's profits. The Court held that it was. Because although the advantage secured was of long duration, it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee; nor was there any addition to or expansion of the profit making apparatus of the assessee. The amount was contributed for the purpose of facilitating the business of the assessee and making it more efficient and profitable. It was, therefore, revenue expenditure.

*In the case of [Commissioner of Income-tax, Bombay City- I v. Associated Cement Companies Ltd.](#) (172 ITR 257) the respondent-company entered into an agreement to supply water to the municipality and provide water pipelines as also to supply electricity for street lighting and put up a transmission line for that purpose. The assessee also agreed to concrete the main road from the factory to the railway station. The amounts expended for these purposes were held to be revenue expenditure since the installations and accessories were the assets of the municipality and not of the assessee. The expenditure, therefore, did not result in creating any capital asset for the company. The advantage secured by the respondent was immunity from liability to pay municipal rates and taxes for a period of 15 years. This Court said that had these liabilities been paid, the payments would have been on revenue account. Therefore, the advantage secured was in the field of revenue and not capital.*

*In the case of [Commissioner of Income-tax v. Bombay Dyeing and Manufacturing Co. Ltd.](#) (219 ITF 521) the company contributed to the State Housing Board certain amounts for construction of tenements for its workers. The tenements remained the property of the Housing Board. It was held that the expenditure was incurred wholly and exclusively on the welfare of the employees and, therefore, constituted legitimate business expenditure. As the assessee company acquired no ownership rights in the tenements, this Court said that the expenditure was incurred merely with a view to carry on the business of the company more efficiently by having a contented labour force.*

*All these cases have looked upon expenditure which did bring about some kind of an enduring benefit to the company as a revenue expenditure when the expenditure did not bring into existence any capital asset for the company. The asset which was created belonged to somebody else and the company derived an enduring business advantage by expending the amount. In all these cases, the expense has been looked upon as having been made for the purpose*

*of conducting the business of the assessee more profitably or more successfully. In the present case also, since the asset created by spending the said amounts did not belong to the assessee but the assessee got the business advantage of using modern premises at a low rent, thus saving considerable revenue expenditure for the next 39 years, both the Tribunal as well as the High Court have rightly come to the conclusion that the expenditure should be looked upon as revenue expenditure.”*

15. In this view of the matter and considering the facts and circumstances of the case and also by respectfully following the decision of Hon'ble Supreme Court in the case of CIT Vs. Madras Auto Services (P) Ltd. (supra), we are of the considered view that expenditure incurred by the assessee for the purpose of laying railway track, conveyor belt and ventilation duct in a work site is temporary, site specific and non-enduring beyond the life of the specific contract, which cannot be treated as capital in nature which gives enduring benefit to the assessee. The temporary asset created by the assessee will last for temporary period or till the completion of the contract work and once the contract is completed, these structures are either dismantled or move to a temporary site or lose their functional utility for the assessee. They do not form part of the permanent profit earning

apparatus of the assessee. Therefore in our considered view, the expenditure incurred by the assessee for the above purpose cannot be considered as capital in nature which gives enduring benefit to the assessee. The Assessing Officer without appreciating the relevant facts, simply held that the expenditure is capital in nature and allowed depreciation. The Ld. CIT(A) without appreciating the relevant facts sustained the additions made by the Assessing Officer. Thus, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the additions made towards disallowance of the expenditure incurred for railway track, rollers and structures, conveyor belt and ventilation duct for Rs.6,55,60,180/-.

16. In the result, the appeal filed by the assessee is allowed.

**ITA Nos.1337 to 1340/Hyd/2025 (for A.Ys. 2014-15, 2015-16, 2017-18 & 2018-19)**

17. The facts and issues involved in these appeals are identical to the facts and issues which we had considered in assessee's own case for the A.Y. 2013-14 in ITA

No.1336/Hyd/2025. But for the figures, the facts are exactly identical to the facts considered by us for the A.Y. 2013-14. The reasons given by us in preceding paragraph nos. 12 to 15 shall apply mutatis mutandis to these appeals, as well. Therefore, for similar reasons, we set aside the orders of the Ld. CIT(A) and direct the Assessing Officer to delete the respective additions made towards disallowance of the expenditure incurred for railway track, rollers and structures, conveyor belt and ventilation ducting after allowing depreciation thereof for Asst. Years 2014-15, 2015-16, 2017-18 and 2018-19.

18. In the result, the appeals filed by the assessee in ITA Nos.1337 to 1340/Hyd/2025 are allowed.

20. To sum up, all the appeals filed by the assessee are allowed.

**Order pronounced in the open Court on 09th Jan., 2026.**

**Sd/-**

**(VIJAY PAL RAO)  
VICE PRESIDENT**

Hyderabad, Dated: 09.01.2026.

*\* Reddy gp*

**Sd/-**

**(MANJUNATHA G)  
ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1.	M/s. Nuziveedu Swathi Coastal Consortium, 8-2-686/7/12B, Plot No.503, Kamil Residency, Road No.12, Banjara Hills, Hyderabad-500 034
2.	The ACIT, Circle 6(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,