

**आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 117/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

Evergreen Engineering Company Pvt. Ltd., 35/B, Mahal Industrial Estate, Mahakali Caves Road, Andheri (E), Mumbai - 400 093.	<b>बनाम/</b> v.	Addl. CIT, Range 8(1), Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400 020.
स्थायी लेखा सं./PAN : AAACE 2499L		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Shri Neomi Lakhpatia
Revenue by :	Shri Naveen Gupta (D.R.)

सुनवाई की तारीख / **Date of Hearing** : 16-08-2016

घोषणा की तारीख / **Date of Pronouncement** : 31-10-2016

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal filed by the assessee being ITA No. 117/Mum/2015, is directed against the appellate order dated 9<sup>th</sup> October, 2014 passed by learned Commissioner of Income Tax (Appeals)- 16, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 22<sup>nd</sup> February, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) read as under:-

**“I. DISALLOWANCE OF REPAIRS AND MAINTENANCE EXPENSES OF Rs. 5,36,217/- BY TREATING THE SAME AS CAPITAL EXPENDITURE.**

1. The Learned CIT(A) erred in confirming disallowance of the repairs and maintenance expenses on factory building of Rs. 5,36,217/- paid to Prabhu Constructions, treating the same as capital - expenditure after allowing depreciation thereon of Rs. 53,622/-.

2. The Learned CIT(A) ought not to have confirmed disallowance of revenue expenditure of Rs. 5,36,217/- as capital expenditure.

3. Without prejudice to above, there was error in computing the disallowance for which a rectification application is also made u/s 154 dated 11.3.2013 separately.

4. The disallowance of Repairs & Maintenance expenses as capital expenditure requires to be deleted.”

3. The Brief facts of the case are that the assessee is a firm engaged in the business of manufacturing of engineering goods like lighting, electrical, electronics, auto ancillary products and glow signage’s.

It was observed by the A.O. on perusal of Schedule 16 to the Profit & Loss Account for the year ended 31<sup>st</sup> March, 2010 that the assessee has claimed a sum of Rs. 19,92,370/- on account of repairs to building (factory). In the course of scrutiny proceedings u/s 143(3) read with Section 143(2) of the Act, the assessee was asked to furnish the party-wise break up of these expenses and to show cause as to why the expenses on account of repairs to building (factory) should not be capitalized and also to furnish copies of the relevant bills and vouchers. The assessee produced copies of the bills raised by a civil contractor viz. M/s. Prabhu Constructions. On perusal of the same , it was observed by the AO that certain items of expenditure included in those bills

are in the nature of capital expenditure and the same needs to be disallowed as revenue expense as claimed by the assessee. It was pointed out to the assessee that the similar issue arose for consideration before the then A.O. in the preceding year i.e. assessment year 2009-10 whereby certain amount of expenditure incurred on account of repairs to factory building was capitalized and the same has also been upheld by the Id.CIT(A) and it was confronted to the assessee that as to why the similar stand should not be taken on this count in the year under consideration. The submission of the assessee were considered by the AO but the same were not acceptable to the AO as some of the items noticed from the bills raised by M/s. Prabhu Constructions furnished by the assessee appeared to be in the nature of capital expenditure to the AO and as such in the opinion of the AO the same are not allowable in view of the provisions laid down in sub-section (1) of section 37 of the Act as the same is capital expenditure and the following expenses were disallowed and were capitalized against which depreciation was allowed as per the provisions of the scheme of the Act by the AO, vide assessment order dated 22-02-2013 passed by learned AO u/s. 143(3) of the Act.

Bill No.	Date	Description	Amount (Rs)
15	14.08.2009	Concrete demolishing	821.80
	14.08.2009	Concrete wall	934.44
		Plaster	4411.00
		Repairing tadpatri damber	107000.00
		Shutter and window patti granite	41778.00
15	14.08.2009	Kota with mirror polish	176922.20
28	08.10.2009	Concrete demotion	421.75
		Flooring	13626.90
		Shield	4433.80
5	22.05.2009	Concrete	44625.00
		Concrete with soling fixing by sand	81982.50
		Concrete and rubble soling	46510.10
14	14.08.2009	Bricks masonry	6750.00
		Plaster	6000.00
		TOTAL	536217.49

4. Aggrieved by the assessment order dated 22-02-2013 passed by the A.O. u/s 143(3) of the Act, the assessee filed first appeal before the Id. CIT(A).

5. The Id. CIT(A) rejected the appeal of the assessee following the decision of the learned CIT(A) with respect to the appeal of the preceding assessment year i.e. 2009-10. During appellate proceedings, the Id. CIT(A) observed that the assessee had five different units at different location having huge area. The details of units on which the repairs & paintings are as under:-

- Unit I at Marol Andheri East (21389 sq. ft.)
- Unit II at Vasai Village – Gokhiware (8135 sq. ft.)
- Unit III at Navghar, Vasai (E) (5430 sq. ft.)
- Unit V at Vasai Chinchpada, Village – Gokhiware (28328.20 sq. ft.)

The assessee submitted that the factory buildings were purchased/constructed in years 1971-72, 1997-98, 1989-90, 2002-03, 2004-05 and the repairs were carried out to keep the premises in usable condition, there is no new asset which came into existence due to the repairs conducted by the assessee. It was submitted that all the premises are very old, requires repairs & maintenance to keep it in the working condition. It was submitted by the assessee that the repairs and maintenance expenditure incurred were necessary to maintain the productive capacity of the building and are in the nature of "current repairs" which are allowable as per Section 30 of the Act and these are not capital expenditure as demolition does not give rise to any new capital structure. It was submitted by the assessee that the plastering, window demolishing & fitting, painting work, civil work, plastering, concrete, replacement of flooring etc are revenue expenditure and allowable as current repairs u/s 30 of the Act. It was submitted that no new asset came into possession nor any enduring advantage was obtained by the assessee by incurring these expenditure which are in nature of current repairs. It was

also pointed out that error has taken place whereby the disallowance for repairing work on 'tadpatri damber shutter and windows patti' has been wrongly taken at Rs. 1,07,000/- in the assessment order, instead of correct amount Rs. 10,700/-, thus the amount of disallowance should be Rs. 4,39,917/- instead of Rs. 5,36,217.49 added by the learned AO in the assessment order dated 22-02-2013 passed u/s 143(3) of the Act for which rectification application u/s. 154 of the Act was filed with the AO on 11.03.2013. The assessee relied upon many case laws which are mentioned in the ld. CIT(A)'s order vide pages 7 & 8. The ld. CIT(A) following his predecessor's order for the assessment year 2009-10 held that these expenses are capital in nature and the expenditure debited in the books of account is of the nature of putting Kota Marble, flooring, concrete, shutter and window patti etc. which would increase the life and value of the building and would also provide enduring benefits to the business. The expenditure was confirmed to be of capital nature by learned CIT(A) in identical circumstances while deciding the appeal of the assessee for the assessment year 2009-10. Thus, the action of the A.O of disallowing the expenditure as revenue expenditure, and instead treating the same as capital expenditure and allowing the depreciation on the same was confirmed by learned CIT(A) vide appellate orders dated 09-10-2014.

6. Aggrieved by the appellate order dated 09-10-2014 passed by the ld. CIT(A), the assessee filed appeal with the Tribunal.

7. The ld. Counsel for the assessee submitted that similar issue arose in the preceding assessment year 2009-10 before the Tribunal, whereby the Tribunal in ITA No. 1185/Mum/2013 for the assessment year 2009-10 vide appellate orders dated 24<sup>th</sup> April, 2015 allowed the claim of the assessee toward repair and maintenance expenditure by holding the same to be revenue expenditure and, hence, the matter is covered by the afore-stated

decision of the Tribunal for assessment year 2009-10 as the facts are identical in the instant assessment year.

8. The ld. D.R. relied on the order of the authorities below.

9. We have considered the rival contentions and also perused the material available on record including the afore-stated Tribunal order. We have observed that the assessee has five factories with huge covered areas as mentioned in preceding para's of this order and these factories were stated to be built /acquired in the year 1971-72, 1997-98, 1989-90 to 2002-03 , 2004-05. . The assessee has claimed to have incurred expenses for repair and maintenance for maintenance of the existing five factories and claimed the same as current repairs u/s 30 of the Act. The Revenue has contended that the said expenses are capital expenditure on which depreciation was allowed by the authorities below . We have gone through the details of expenditure incurred which are placed in paper book page 5 to 10 filed with the Tribunal. We have observed that the same are incurred towards demolishing of existing structure, plastering, masonry , pipe fitting , window removing & fitting, repairing, painting work, civil work, plastering, concrete, replacement of flooring, Kota with marble polish etc. . We have observed that similar expenses were also incurred by the assessee in the immediately preceding assessment year which were allowed by the Tribunal by holding the same as revenue expenditure in ITA No. 1185/Mum/2013 for the assessment year 2009-10 vide orders dated 20<sup>th</sup> April, 2015 , whereby the Tribunal held as under:-

*"The solitary issue urged in the appeal filed by the assessee is whether the Ld CIT(A) was justified in upholding the addition of Repairs and maintenance expenses of Rs.19,12,723/- by treating the same as Capital expenditure.*

2. We heard the parties and perused the record. The Ld A.R invited our attention to page no.6 of the paper book and submitted that the expenditure of Rs.19,12,723/- was incurred only to repair and maintain the existing buildings. The nature of expenses incurred by the assessee are given in page no.6 as under:-

EVERGREEN ENGINEERING CO. PVT. LTD.  
PAN: AAACE2499L  
ASSESSMENT YEAR: 2009-10

DETAILS OF BUILDING REPAIRS & MAINTENANCE PAYMENTS TO M/s PRABHU CONSTRUCTIONS					
Sr.No.	Date	Bill No.	Particulars	Rs.	Rs.
I			<u>Factory Building (Unit-I) at Andheri (East)</u> <u>(21389Sq.Ft)</u> Plot no.B-35, Mahal Industrial Estate, Mahakali Caves Road, Gundavli, Andheri (East), Mumbai - 400093 (Yr 1971-72)		
	16/04/2008	6	Repairs & replacement of Cota Flooring & Polishing of 1742.50 Sq Ft	143,869	
	16/04/2008	7	Work of Terrace water proofing 3041.56 sq ft.	387,546	
	24/05/2008	5	Tiles Flooring, Polishing, Structure with Concrete, Bricks Masonary Plaster, replacement of Sintex Tank of Canteen Terrace etc.	105,595	
	15/09/2008	14	Polishing stair case, masosary, Cota Flooring, white wash, painting etc	139,760	
	29/10/2008	26	Repair & replacement for welding department, terrace, demolishing & concrete work 700 sq ft, plastering 15681 sq ft, cota flooring 1556 sq ft, replacement of Tiles 197.04 sq ft etc.	<u>156,667</u>	933,437
II			<u>Factory Building (Unit-II) at Range Office.</u> <u>Vasai (E) (Plot Area 8135 sq ft - Built Up</u> <u>Area 3468.27 Sq Ft)</u> Plot no. 3, Seth Atmaram Shah Road, near Range Office, Village - Gokhiware, Taluka - Vasai, Dist. -Thane (Yr 1997-98)		

III	04/05/2008	9	Replacement of Flooring 2200 Sq Ft & Plastering 43 sq ft. Concreting	188,234	
	03/09/2008	12	Replacement of PVC Nala pipes, Tal Patri, Plumbing fitting, Damber filling, Shutter repairing RCC Demolishing, Bricks Masonary, Plastering,	50,086	
	20/06/2008	10	Partitions, welding	<u>110,348</u>	348,667
	<b><u>Factory Building (Unit-V) at Chinchpada, Vasai (E)(28328.20 Sq ft)</u></b> <b>Plot No. 9, 10, 16 &amp; 17, Chinchpada, Village - Gokhiware, Taluka - Vasai, Dist. - Thane (Yr 2004-05)</b>				
	04/09/2008	13	Demolishing, concrete finish, tiles flooring, white wash, etc	67,491	
	1/12/2008	27	Demolishing concrete, wall demolishing, rubber removing, soil excavation, casting, tiling, plumbing fitting, painting etc	96,045	
	1/12/2008	28	Fabrication work: replacing old channels plate removed and on old structure chequered plate fixing, welding, grouting etc .	125,761	
	28/01/2009	38	Painting & Civil Work - Sandtex painting – running Sq ft 18596.32, Oil paint 470.82 Sq Ft, Plastering, plaster chipping, floor repairing, white wash etc.	226,351	
	05/03/2009	44	Plastering, concrete, plumbing, painting sandtex, white wash, painting main gate, oil paint etc	<u>114,971</u>	630,619
			<i>Total</i>	<u>1,912,723</u>	

3. A perusal of the above said expenditure would show that there is merit in the submissions of the assessee. Though the Ld D.R strongly defended the order of Ld CIT(A), yet we are convinced that the assessee has incurred the impugned expenses on repair and maintenance of the existing building by replacing flooring and carrying out other works. Accordingly, we are of the view that the impugned expenditure cannot be in the nature of Capital expenditure in the absence of creation of any new

*asset of enduring nature. Accordingly, we set aside the order of Ld CIT(A) and direct the assessing officer to allow the impugned expenditure as revenue expenditure. Consequent adjustment shall also be made with regard to the depreciation allowed by the assessee.*

4. *In the result, the appeal filed by the assessee is allowed."*

Respectfully following the order of the co-ordinate Bench of this Tribunal in assessee's own case in ITA No . 1185/Mum/2013 vide orders dated 24-04-2015 for the preceding assessment year 2009-10 , we are of the considered view that the assessee has incurred expenses in the nature of current repairs u/s 30 of the Act and hence the same cannot be treated as capital expenditure in the absence of creation of any new asset of enduring nature and hold them to be revenue expenditure . However, consequently the depreciation allowed by the Revenue shall be adjusted accordingly in accordance with our above orders. We order accordingly .

10. In the result, the appeal filed by the assessee in ITA No. 117/Mum/2015 for the assessment year 2010-11 is allowed.

Order pronounced in the open court on 31<sup>st</sup> October, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 31-10-2016 को की गई ।

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31-10-2016

I

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai