

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1241/Bang/2014
(Assessment year: 2010-11)**

Deputy Commissioner of Income-tax,
Circle 12(5),
Bangalore. ... Appellant

Vs.

M/s. W S Test Systems Pvt. Ltd.
27th KM, Bellary Road,
Doddajala Post,
Bangalore-562157. ... Respondent
AABCM3218Q

Appellant by: Shri P.Dhivahar, JCIT(DR).
Respondent by: Shri K.Seshadri, CA.

Date of hearing : 15/07/2015.
Date of pronouncement: 30/07/2015.

ORDER

Per Smt. P. MADHAVI DEVI, JM:

This appeal by the Revenue is against the order of the CIT(A)-III, Bangalore, dated 25/06/2014 for the assessment year 2010-11.

2. The revenue is aggrieved by the order of the CIT(A) in

(i) deleting the addition made by the AO on repairs and maintenance; and

Page 2 of 6

(ii) deleting the addition of Rs.77,200/- on advances made to a director of the assessee-company.

Brief facts of the case are that the assessee-company, which is into the business of manufacturing of engineering goods, had filed its return of income for the relevant assessment year on 11/10/2010 declaring total income of Rs.64,71,600/-. During the assessment proceedings u/s 143(3) of the Income-tax Act, 1961 [‘the Act’], the Assessing Officer (AO) observed that the assessee has debited a sum of Rs.29,71,708/- as repairs and maintenance expenditure out of which Rs.17,78,688/- is stated to be towards building repairs and maintenance. The assessee was asked to furnish the details of the expenditure and upon verification of the details furnished by the assessee, AO observed that the major expenses are as under:

- (i) Rs.12,93,016/- debited on 11/12/2009 towards purchase of building construction materials for first floor of the building and
- (ii) Rs.80,265/- debited on 29/01/2010 towards Aluminium partition with board and frosted glass and door closer; and
- (iii) Rs.2,32,106/- debited on 17/08/2009 towards canteen block construction.

The AO held that the expenditure incurred was for creation of an asset of an enduring nature and therefore such expenditure is capital in nature. He accordingly, allowed depreciation at the rate of 15% and brought the balance of Rs.16,89,754/- to tax.

Page 3 of 6

3. Aggrieved, assessee preferred an appeal before the CIT(A) who deleted the additions and the revenue is in appeal before us.

4. While the learned departmental representative supported the order of the AO, the learned counsel for the assessee supported the order of the CIT(A) and also submitted that the grounds raised by the revenue for this assessment year are reproduction of the grounds raised by the revenue in the earlier assessment year. He submitted that this issue is also covered in favour of the assessee by the decision of this Tribunal in the assessee's own case for the earlier year, though in the earlier year, repair work was towards wood packing and storage shed whereas during the relevant assessment year, the expenditure was towards repairs and maintenance of canteen on a leased property and therefore it is revenue in nature. The assessee has also placed reliance upon the decision of this Tribunal to which both of us are signatories in the case of *Emdee Apparels vs. ACIT* (2012) 54 SOT 600 (ITAT,Bang.) and Panaji Bench of the Hon'ble Bombay High Court in the case of *CIT vs. Hegde Consultancy Pvt. Ltd.* and another reported in 258 ITR 318 in support of his contention.

5. Having regard to the rival contentions and the material on record, we find that the assessee has incurred expenditure on Aluminium partition and expansion of the existing canteen on a

Page 4 of 6

leased premises and therefore the contention of the learned departmental representative that asset of an enduring nature has been created is not sustainable. The CIT(A), in para.5 of her order, has clearly brought out the details of the repair and maintenance carried out by the assessee and thereafter at para 6.2 has held that the expenditure incurred was only to facilitate the business and that it did not result in any enduring advantage to the assessee. Further, we notice that the CIT(A) has also relied upon the decision of the Hon'ble Supreme Court in the case of *CIT vs. Madras Auto Services Pvt.Ltd.* (233 ITR 468) for holding as above. We find that the similar issue had arisen in the assessee's own case for the earlier assessment year and the Tribunal has upheld the finding of the CIT(A) in deleting the addition on account of repairs and maintenance. Therefore, we do not see any reason to interfere with the order of the CIT(A) on this issue. This ground of appeal of the revenue is accordingly rejected.

6. Further, as regards the second ground of appeal, brief facts are that on verification of the balance sheet of the assessee, the AO observed that during the relevant financial year, the assessee-company had lent Rs.6 lakhs to Dr. S.Gopal, Executive Director of the company and no interest is charged thereon. He observed that during the year, Rs.9 lakhs has been reflected as receivables. He observed that for the assessment

Page 5 of 6

year 2008-09, it was analyzed in the assessment order that loan received as well as finance charges paid have increased in comparison with previous years. He therefore asked the assessee as to why the proportionate interest should not be disallowed. He held that the assessee's contention that loan has been advanced out of own funds is not acceptable because as far as the business is concerned, it is flow of funds in and out and if the money is available with the business there will not be any necessity to borrow and pay interest thereon. Therefore, he disallowed proportionate interest of Rs.77,200/- and brought it to tax.

6.1 Aggrieved, assessee preferred an appeal before the CIT(A) who deleted the same following her own order for the earlier assessment year i.e. 2008-09.

6.2 Against the relief given by the CIT(A), revenue is in appeal before us. The learned counsel for the assessee submitted that the issue of notional interest on interest-free advance given to executive director of the assessee-company had arisen in the earlier assessment year 2008-09 also and this Tribunal in ITA No.1731/Bang/2013 dated 30/09/2014 at para 17 of its order held as under:

"17. We have considered the rival submissions. We are of the view that the order of the CIT(Appeals) calls for no interference. It is not in dispute that the assessee had share capital and resources of Rs.2.01 crores which was far in excess of Rs.10 lakhs advanced as interest free loan to the executive director. Secondly, factually it is not in dispute that

Page 6 of 6

loans on which interest was paid and claimed as revenue expenditure, were specific loans which had a bearing on the business of the assessee and could not have been used by the assessee for any other purpose. In the given circumstances, we are of the view that the order of the Id. CIT(Appeals) does not call for any interference. Consequently, ground No.3 raised by the revenue is dismissed."

We find that this issue has arisen for the assessment year 2008-09 and this Tribunal has already held that no such disallowance of interest is called for. We, therefore, see no reason to interfere with the order of the CIT(A).

7. In the result, the revenue's appeal is dismissed.

Pronounced in the open court on 30th July, 2015.

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER
eksrinivasulu

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore