IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 307 of 2008

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PRECISION WIRES INDIA LIMITED

Versus

ASSISTANT COMMISSIONER OF INCOME TAX

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Appearance:

MR TUSHAR P HEMANI WITH MS ADITI SHETH ADVOCATES (2790) for the Appellant(s) No. 1

MR.VARUN K.PATEL(3802) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 11/02/2020

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1 This Tax Appeal under Section 260A of the Income Tax Act, 1961 [for short, 'the Act, 1961'] is at the instance of the assessee and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'D', Ahmedabad dated 9th February 2007 in the ITA No.1967/Ahd/2001 for the A.Y. 1997-98.

2 This Tax Appeal came to be admitted on the following two substantial questions of law:

> *"[i] Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in not allowing the claim of bad debt when the assessee has admittedly written off the debt in its books of accounts?*

[ii] Whether, in the facts and circumstances of the case, the order of the Income Tax Appellate Tribunal was perverse inasmuch as it records an incorrect fact that the debt has become bad after 31/03/1997?

[iii] Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that expenditure incurred on replacement of Plant and Machinery is a capital expenditure?

[iv] Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in treating expenditure incurred on Dies and Tools, which are in the nature of consumable, as capital expenditure?"

3 It appears from the materials on record that the assessee filed its return of income dated 28th November 1997 declaring the total income at Rs.2,72,40,280/-. Later, an order came to be passed under Section 143(1)(b) of the Act, 1961 dated 29th April 1998 giving the consequent effect of the CIT(A)'s order in the A.Y. 1996-97 for the year under consideration.

4 The Assessing Officer passed an order dated 5th October 1999 under Section 143(3) of the Act, 1961. The Assessing Officer disallowed the claim of the assessee in treating the expenditure incurred on replacement of the plant and machinery as the revenue expenditure. It also disallowed treating the expenditure incurred on the dies and tools which are in the nature of consumable as the revenue expenditure.

5 The assessee being dissatisfied with the order of the assessment preferred appeal before the CIT(A), Baroda. On the first substantial question of law, the CIT(A) recorded the following findings:

"7 The next ground of appeal relates to the disallowance of

Rs.6,43,741/- on account of repairs and maintenance expenses. During the course of hearing the ld. Counsel for the appellant brought to my notice that in one of the units the fire broke out on 7.7.96 on account of which lot of damage was caused to the plant and machinery in the factory premises. In order to make good those damages the repair work was carried out in the plant and machinery by replacement of the damaged parts and the expenses incurred on that should have been allowed by the assessing officer as revenue expenses. But the assessing officer treated those expenses as capital expenditure and added the same after allowing the depreciation on the same. In this connection he further pleaded that since by repairing the plant and machinery, no new asset has come into existence, the treatment given by the assessing officer is not correct. To support his arguments he quoted before me the following decisions:

1. CIT vs. Grand Hotel 189 ITR 153 – 154 (All.)
2. CIT vs. Southern Publications Ltd. 211 ITR 397 (Mad)
3. C.R. Corera and Brothers vs. CIT 49 ITR 188, 195 (Mad)
4. Hanuman Motor Service vs. CIT 66 ITR 88 (Mysore)
5. CIT vs. Coimbatore Motor Transport Society 70 ITR 165

In all the above decisions, the issue has been decided on identical facts in favour of the assessee. He, therefore, pleaded that the ld. Assessing officer was not justified in disallowing the repair expenses treating the same as of capital nature and the addition made in this regard should be deleted.

7.1 After hearing the appellant's counsel and after going through the material on record, I am inclined to accept the argument of the appellant's counsel that since the repairs have been carried out in order to replace the damaged parts of the plant and machinery and since no new asset has come into existence, the addition made by treating the repair expenses as of capital nature, is not justified. Taking this plea into consideration and also following the above mentioned decisions of various High Courts on this point (supra), I hold that the addition is not justified and the same stands deleted. However, the assessing officer is directed to withdraw the amount of depreciation allowed on it."

6 The Revenue being dissatisfied with the aforesaid findings recorded by the CIT(A) went in appeal before the Tribunal. The Tribunal disturbed the aforesaid findings recorded by the CIT(A) and while allowing the appeal of the Revenue held as under:

"23 So far as disallowance out of repair and maintenance is concerned, the brief facts of the case as have been revealed from the records are that

the Assessing Officer, during the course of assessment proceedings, came to know that the assessee had claimed an amount of Rs.6,43,741/- in the expenses claimed under the head "repair and maintenance", but on verification, it was found that once enamelling machine was destroyed in fire on 07/07/1996 which was reconstructed by the assessee by incurring aforesaid amount.

24 It was, in view of the above facts and circumstances of the case, that the Assessing Officer considered the expenditure in capital nature. The CIT(Appeals), on the other hand, considered the same as Revenue nature.

25 Having considered the totality of the facts and circumstances of the case, we are of the opinion, that the CIT(Appeals) was not justified in accepting the assessee's claim that reconstructing the machine lost due to fire had not resulted in giving into being a new asset. The order of the CIT(Appeals) is, therefore, set aside and that of Assessing Officer is restored."

7 Thus, it appears that the Tribunal considered the expenditure incurred on the replacement of plant and machinery as a capital expenditure on the premise that one enamelling machine was destroyed due to fire and the same came to be reconstructed by the assessee by incurring expenses to the tune of Rs.6,43,741/-.

8 Ms. Aditi Sheth, the learned counsel appearing for the appellant vehemently submitted that the Tribunal committed a serious error in holding that the expenditure incurred on the repair of the machine as a capital expenditure. According to Ms. Sheth, having regard to the fact that no new asset could be said to have been created by the assessee, the expenditure incurred could be said to be towards the revenue expenditure. The argument proceeds on the footing that as the machine was damaged, it had to be repaired. In such circumstances, it could not be said that the object of the assessee in incurring expenses in repairing the machine was with a view to bringing a new asset into existence.

9 In such circumstances referred to above, the learned counsel would submit that the CIT(A) was right in holding that the expenditure

incurred for the repairs of the machine was in the nature of revenue expenditure and such finding of fact could not have been disturbed.

10 Ms. Sheth, in support of her submissions, has placed strong reliance on two decisions of this High Court: (1) **Gobind Glass & Industries Ltd vs. DCIT** [Tax Appeal No.12 of 2002 decided on 21st November 2014] and (2) **Additional Commissioner of Income Tax vs. Desai Brothers** [1977] 108 ITR 14 (Guj).

11 On the other hand, Mr. Varun Patel, the learned counsel standing counsel appearing for the Revenue, while opposing this appeal, vehemently submitted that no error, not to speak of any error of law could be said to have been committed by the Tribunal in holding that the expenditure incurred by the assessee on the repairs of the machines is a capital expenditure. Mr. Patel would submit that the Tribunal being the final fact finding authority, this Court may not disturb the finding of fact recorded by the Tribunal that the machine got extensively damaged. The entire machine had to be repaired or renovated. Mr. Patel would submit that having regard to the materials on record, it could be said that the repairing undertaken by the assessee was with a view to bringing into existence a new asset or with a view to have a substantial replacement or renovation.

12 In such circumstances referred to above, Mr. Patel prays that the first substantial question of law as framed by this Court may be answered in favour of the Revenue and against the assessee.

- **ANALYSIS:-**

13 In **Desai Brothers (supra),** the assessee claimed deduction of expenditure incurred for replacing a petrol engine by a diesel engine in its truck which was being used in the business. The assessee claimed that

the said replacement cost was in fact the expenses for current repairs. The ITO rejected the claim of the assessee. The AAC held that the cost of replacement was only cost of repairs to the machinery and the claim was allowed under Section 31 of the Act, 1961. In reference, this Court held as under:

> "*14. The very fact that the assessee was required to replace the unserviceable petrol engine was by itself a clear indication as to the nature of expenses. The unserviceable state of the petrol engine could be the result of continuous use of the truck in the business and the necessity for replacing such an unserviceable petrol engine had arisen out of the continuous use of the asset, namely, the truck in question. In that view of the matter, we are, therefore, not inclined to accept the submission of Mr. Kaji on behalf of the revenue that replacement of diesel engine would achieve an advantage of permanent endurance to the business of the assessee-firm in the sense of bringing into existence a capital asset. Mr. Kaji relied on the decision of the Andhra Pradesh High Court in R. B. Shreeram & Co. (P.) Ltd. v. Commissioner of Income-tax [1968] 67 ITR 428 (AP) where the court held that expenditure incurred in replacing petrol engine of a truck by diesel engine is capital expenditure, inasmuch as it is incurred for the creation of an advantage of an enduring benefit and forms part of the assets of the undertaking, and the assessee was, therefore, entitled to development rebate under section 10(2)(vib) of the Indian Income-tax Act, 1922, on the cost of diesel engine. The Andhra Pradesh High Court has followed the decision of the Supreme Court in Commissioner of Income-tax v. Mir Mohammad Ali [1964] 53 ITR 165 (SC) and held that not only diesel engines have been held to be machinery but also the expression "installations" would include and apply when machinery is inducted or introduced. This decision of the Andhra Pradesh High Court, therefore, for the same reasons on which we have held about the non-application of the decision of the Supreme Court in Mir Mohammad Ali's case [1964] 53 ITR 165 (SC) would not be of any assistance to the revenue.*
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> *15. Mr. Kaji, therefore, attempted to persuade us that this was a case of substantial replacement and, therefore, would not come within the terms of section 31(1) where only expenses incurred in connection with current repairs can be allowed as deduction. In New Shorrock Spinning and Manufacturing Co. Ltd. v. Commissioner of Income-tax [1956] 30 ITR 338 (Bom) the Bombay High Court considered what is the difference between repairs and renewal and quoted with approval the following observation of Lord Justice Buckley in Lurcott v. Wakely and Wheeler [1911] 1 KB 905, 923 (CA) :*

> *"'Repair' and 'renew' are not words expressive of a clear contrast. Repair always involves renewal; renewal of a part; of a subordinate part ..... Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion."*

16. Chief Justice Chagla, as he then was, referred to the two advertent trends amongst different High Courts and preferred to adopt the view pronounced by the Patna High Court in Commissioner of Income-tax v. Darbhanga Sugar Company Ltd. [1956] 29 ITR 21 (Pat) and by the Madras High Court in Commissioner of Income-tax v. Sri Ram Sugar Mills Ltd. [1952] 21 ITR 191 (Mad). The facts in New Shorrock Spinning and Manufacturing Co. Ltd.'s case [1956] 30 ITR 338 (Bom) were illustrative where the assessee-company which was a textile company spent a sum of Rs. 30,557 for replacing certain parts in 646 looms and claimed the amount of expenditure for current repairs under section 10(2)(v). The parts which were replaced were lighter in weight and were such as could be easily lifted and conformed to the international labour standard and were superior to the old device. These parts were replaced after a period of 60 years. The court followed the well-established canon of construction of all taxing statutes, the charge should be made less heavy against the assessee if a reasonable interpretation of the language used by the legislature leads to that conclusion. In the opinion of the court, the expression, "current repairs" used in section 10(2)(v) means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration which is only for the purpose of preserving or maintaining an already existing asset, which does not bring a new asset into existence or does not give to the assessee a new or different advantage, and they must be repairs which are attended to as and when the need for them arises. The Bombay High Court in the said case also emphasised the question as to when a building, machinery, plant or furniture requires repairs and when the need arises that question must be decided not by any academic or theoretical test but must be decided by the test of commercial expediency. It cannot be said, therefore, that when the assessee replaced the unserviceable petrol engine with a diesel engine it was intending to bring into existence either a new asset or to achieve advantage or benefit to itself for permanent endurance, nor can it be said that it was substantially replacing the machinery. It is no doubt true that there was no material on the record before the Tribunal as to what would be the price or cost of a new truck. But, none the less, the assessee could not have been able to purchase a new truck from the amount which it spent in replacement. This very question arose before the Mysore High Court in Hanuman Motor Service v. Commissioner of Income-tax [1966] 67 ITR 88

(Mys), where a transport operator claimed the expenses incurred by him in replacement of a petrol engine with diesel engine as current repairs under section 10(2)(v). The court held in that case that what was really being done was to preserve and maintain an already existing asset and the expenses were not incurred to bring a new asset into existence or to obtain a new or a fresh advantage to the business of the assessee. In that view of the matter, therefore, we do not think that the object of the assessee in incurring the expenses in replacement was with a view to bringing into existence a new asset or was with a view to have a substantial replacement or renovation, but it appears that the assessee was motivated in making the expenses by the object of preserving and maintaining the asset for the purpose of use in the business. We are, therefore, of the opinion that, in the facts and circumstances of the case, the Tribunal was right in holding that the expenditure incurred for replacing the petrol engine by diesel engine was in the nature of revenue expenditure for current repairs to the machinery of the assessee. In that view of the matter, therefore, we answer the question referred to us in the affirmative and against the revenue. The Commissioner of Income-tax will pay costs of this reference to the assessee."

14 Applying the aforesaid dictum as laid in **Desai Brothers (supra),** we have no hesitation in coming to the conclusion that the Tribunal committed an error in holding that the expenditure incurred on replacement of plant and machinery is a capital expenditure.

15 In such circumstances, we answer the first substantial question of law in favour of the assessee and against the Revenue.

16 Now, coming to the second substantial question of law, the CIT(A) held as under:

"*10 The next ground of appeal relates to the disallowance of Rs.4,50,207/- being tools and dies written off. The ld. Counsel for the appellant brought to my notice that there are two types of dies ussed bythe appellant during the process of production. The first die is Tungsten dies which are used for drawing thicker size of copper wires and the prices of which range from Rs.300/- to Rs.1,500/- maximum for each die. The second types of dies are the diamond dies required for drawing intermediary and thinner size of copper wires. Actually these dies though named diamond dies are not made of diamonds but are made of steel or brass with small industrial diamond fix. These diamond dies require*

polishing every week and generally crack due to mechanical pressure and other processing constraints and are oftenly replaced during the year as a matter of stores and spares. Placing these facts before me, the ld. Counsel for the appellant pleaded that since these dies are very often replaceable items and are being replaced from year to year, the same amount to revenue expenditure. To support his argument he quoted before me, the following decisions:

1. CIT vs. Mysore Spun Concrete P. Ltd 194 ITR 159 (Kar.)
2. CIT vs. Lake Palace Hotel 227 ITR 561 (Raj.)

In these decisions, on identical facts, the issue has been decided in favour of the assessee. He, therefore, pleaded that the ld. Assessing officer was not justified in making addition of these dies treating the same as of capital nature and the addition made should be deleted.

10.1 After hearing the appellant's counsel and after going through the material on record, I am convinced with his arguments that since the expenses incurred on these dies is for the replacement of the damaged dies, the same amounts to the revenue expenditure. Taking this plea into consideration and also following the decisions of Karnataka as well as Rajasthan High Courts (Supra), I hold that the addition made is not justified and the same stands deleted. However, the assessing officer is directed to withdraw the depreciation allowed on it."

17 Thus, the CIT(A) took the view that the expenditure incurred by the assessee on dies and tools in the nature of consumable is revenue expenditure. The Tribunal disturbed the aforesaid finding of fact recorded by the CIT(A) holding as under:

"Coming to issue relating to addition of Rs.4,50,207/being the aim on account of written off the tolls and dies to this extent, the CIT(Appeals) deleted the addition by observing as under:

> *"10.1. After hearing the appellant's counsel and after going through the material on record, I am convinced with his arguments that since the expenses incurred on these dies is for the replacement of the damaged dies, the same amounts to the revenue expenditure. Taking this plea into consideration and also following the decisions of Karnataka as well as Rajasthan High Courts (Supra), I hold that the addition made is not justified the same stands deleted. However, the assessing officer is directed to withdraw the depreciation allowed on it."*

29 After careful consideration of the rival submissions and the facts and

circumstances of the case and in view of decision of ITAT Ahmedabad Bench having held in the case of Gujarat Alluminium Extrusion Ltd. in ITA No.1 19/Ahd/ 1991, dated 06/12/1995, that the dies 3 and tools were capital asset, we are of the opinion that Assessing Officer was quite justified in considering the expenditure on this account as of capital in nature. So far as decisions relied upon by the assessee, such as, in the case of CIT v/.s. Mysore Spun Concret Pipe Pvt. Ltd. (194 ITR 159) [Kar] and in the case of CIT v/s Needle Industries (India) Ltd.(245 1TR 556) [Mad] are concerned, the same being relating to expenditure incurred on moulds being distinguishable on facts are of no help to the assessee. We, therefore , set aside the order of the CIT (Appeals) and restore the order of the Assessing Officer."

18 Ms. Sheth, the learned counsel appearing for the appellant vehemently submitted that the Tribunal committed a serious error in holding that the expenditure incurred on dies and tools which are in the nature of consumable as capital expenditure. Ms. Sheth would submit that the reliance placed by the Tribunal on the decision of the ITAT in Gujarat Alluminium Extrusion Ltd in ITA No.119/Ahd/1991 dated 6th December 1995 is misconceived. It is pointed out that the decision in the **Gujarat Alluminium (supra)** was rendered for the A.Y. 1986-87 when the "patterns, dies and templates" were mentioned under the machinery and plant in the Old Appendix I (applicable for the assessment years 1984-85 to 1987-88) in part III (ii)D(10). It is further pointed out that in the old Appendix I (applicable for the assessment year 1988-89 to 2002-03) which is applicable in the present case, the "dies" find no mention. In such circumstances, it is submitted that the finding of the Assessing Officer that dies form a part of Appendix I is not correct.

19 In support of the aforesaid submissions, Ms. Sheth has placed reliance on the following decisions:

[1] Principal Commissioner of Income-tax, Central, Surat vs. Banco Aluminium Ltd [2018] 93 taxmann.com 52 (Gujarat)

[2] Commissioner of Income-tax vs., Sunbeam Auto Ltd [2018] 89

taxmann.com 191 (Delhi).

20 Mr. Varun Patel, the learned standing counsel appearing for the Revenue would submit that no error, not to speak of any error of law could be said to have been committed by the Tribunal in taking the view that the expenditure incurred on dies and tools which are in the nature of consumable as capital expenditure.

21 Mr. Patel would submit that the purchase of dies and moulds would bring into existence permanent or enduring advantage to the assessee.

22 In such circumstances referred to above, Mr. Patel prays that the second substantial question of law as formulated by this Court may be answered in favour of the Revenue and against the assessee.

23 In the decision of this Court in **Banco Aluminium Ltd (supra),** this Court observed as under:

> *"4. Insofar as the treatment of consumption of machinery spares as capital expenditure in respect of which addition of Rs.90,72,160/- had been made is concerned, the Commissioner (Appeals) noted that such expenditure was in relation to eight items. After considering the submissions of the assessee, the Commissioner (Appeals) observed that some of the items were neither towards repair nor did the same appear to be towards replacement of worn-out parts as claimed by the assessee. Such items appeared to be fresh additions to plant and machinery and some items appeared to be capable of independent functioning. He, therefore, was of the view that such items constituted capital expenditure and could not be considered to be towards current repairs and accordingly held that items No.3, 4, 7 and 8 valued at Rs.13,49,877/- were rightly considered to be capital in nature, and accepted the assessees contention that the expenditure was towards small items which were spares or towards repairs, were expenditure in the nature of revenue expenditure."*
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> *"7. A perusal of the record shows that both the Tribunal and the Commissioner (Appeals) have recorded concurrent findings of facts to the effect that the dies and tools as well as the machinery spares were*

consumable in nature and have accordingly held the expenditure to be revenue in nature. The fact that in earlier years such expenditure had been treated as revenue expenditure by the revenue has also been taken into consideration. Having regard to the concurrent finding of facts recorded by the Commissioner (Appeals) and the Tribunal, it cannot be said that the conclusion arrived at by the Tribunal that the expenditure incurred on dies and tools and machinery spares was revenue in nature, suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law warranting interference. The appeal, therefore, fails and is accordingly dismissed."

24 In **Sunbeam (supra),** the Delhi High Court held as under:

"6. We do not think that any substantial question of law on this aspect/issue arises from the decision of the Tribunal. It has been factually found and that too concurrently by the CIT (Appeals) and the Tribunal that the purchase of dies and moulds did not bring into existence any permanent or enduring advantage to the assessee. It has been found that due to continuous use they wear out fast and further any minor defect in the mould on account of continuous use such as chipping or cracking would render them useless. In any case the longevity of the moulds and dies is not substantial as held by the Tribunal and they have to be replaced frequently to ensure quality of the product. Moreover, the moulds have to be produced to suit the requirements of the particular customer and after the order is met, they become useless and ultimately have to be destroyed to prevent misuse or manufacture of fakes. It has also been found by the appellate authorities that the expenditure on replacement of dies and moulds was earlier allowed by the income tax authorities as revenue expenditure. These are factual findings recorded by the Tribunal which are not disputed before us by the revenue on the basis of any evidence or material. It is well settled that any expenditure on replacement or repairs to plant and machinery which does not bring into existence any enduring or permanent advantage in the capital field is allowable as revenue expenditure. The Tribunal has only applied this settled legal position to the undisputed facts found. Therefore no substantial question of law arises for our consideration. The appeals on this point are accordingly dismissed."

25 We take notice of the fact that while disturbing the finding of fact recorded by the CIT(A), the Tribunal has not assigned any good reason. The Tribunal straightway proceeded to disturb such finding by placing reliance on the decision of the ITAT in the case of **Gujarat Alluminium (supra)**, as discussed above. The expenditure incurred on dies and tools

is a recurring revenue expenditure and no capital asset of enduring benefit comes into existence more so because the dies need to be replaced often.

26 In our opinion, the second substantial question of law stands squarely covered by the decision in the case of **Banco (supra)** and **Sunbeam (supra)** and we propose to follow the ratio of both the decisions.

27 In the overall view of the matter, we have reached to the conclusion that the Tribunal committed an error in passing the impugned order. The appeal preferred by the assessee succeeds and is hereby allowed. The impugned order passed by the Tribunal is hereby quashed and set aside.

28 Both the substantial questions of law are answered in favour of the assessee and against the Revenue. The order passed by the Revenue Tribunal is quashed and set aside to the extent of two substantial questions of law.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

CHANDRESH