आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 5841/Mum/2012

(**निर्धारण वर्ष /** Assessment Year : 2009-10)

M/s Aries Exports Pvt. Ltd., Bhaktawar, 11th floor, Nariman Point, Mumbai – 400 021.	**बनाम**/ v.	Deputy Commissioner of Income Tax – Circle 3(1), Mumbai.
स्थायी लेखा सं./PAN : AACCA2924N		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by	Shri Viral A. Merchant
Revenue by :	Shri Aarsi Prasad

सुनवाई की तारीख **/Date of Hearing : 09-6-2016**
घोषणा की तारीख /**Date of Pronouncement : 07-09-2016**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 5841/Mum/2012, is directed against the appellate order dated 29th August, 2012 passed by learned Commissioner of Income Tax (Appeals)- 5, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 20th December, 2011 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 company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

> "On the facts and under the circumstances of the case and in law, the learned Commissioner of Income Tax Appeals erred in confirming the action of Assessing Officer, of treating Rs. 37,56,259/- as capital expenditure instead of revenue expenditure as claimed by the assessee and disallowing Rs. 35,68,446/- (being 37,56,259 less 7.5% depreciation)."

3. The brief facts of the case are that the assessee company is engaged in the business as exporter of sugar mill machineries, spares and other captive inputs in sugar industry. During the course of assessment proceedings u/s. 143(3) of the Act, the assessee was asked by the AO to give details of repairs and maintenance expenses and on perusal of the details filed by the assessee, the A.O. observed that part of the repair expenses were capital in nature. The assessee was asked to explain as to why the renovation expenses should not be capitalized and how it can be allowable as revenue expenditure. In reply, the assessee submitted as under :-

> "The total expenditure of Renovation for the year ended 31-03-2009 is Rs. 94,61,331/- out of which Rs. 57,05,072/- has been capitalized the details are as follows:
>
> | | |
> |---|---|
> | 1) Furniture & Fixtures - | Rs. 26,99,495 |
> | 2) Office Equipment- | Rs. 12,24,142/- |
> | 3) Air conditioners | Rs 8,13,226/- |
> | 4) Office Computer | Rs 1,54,908/- |
> | 5) Electrical Fittings | Rs 8,13,301/- |

The assessee submitted that since the same can be removed from this place and can be put into use elsewhere, the balance amount of Rs 37,56,259/- is of revenue nature because this expenditure on items cannot be removed from the premises in the event of termination of Rent Agreement. The assessee further submitted that the rent paid for the premises is very low as compared to the prevailing rent in the area and hence the assessee has incurred such expenditure for office renovation. The assessee relied on the decision of Hon'ble Bombay High Court in the case of CIT v. Hedge Consultancy Pvt. Ltd. 127 Taxman 597 (Bom) and the decision of the Tribunal in the case of Living Room Designers v. ITO (Mum) (Trib.) .

The A.O. considered the submissions of the assessee but it was not acceptable to the AO on the ground that the assessee has adopted artificial discrimination by segregating the total expenditure for renovation of Rs. 94,61,331/-, out of which Rs. 57,05,072/- had been capitalized by the assessee and the assessee has claimed the remaining amount of Rs. 37,56,259/- as revenue expenditure on the ground that such items cannot be removed. The A.O. observed that the expenditure of Rs. 37,56,259/- is not in the nature of regular repairs but capital addition in the form of partitions, marble flooring, tables, civil works etc. and a sum of Rs. 7,95,548/- has been paid as architect fees for these capital expenditure. The AO observed that the explanation to Section 30 of the Act inserted w.e.f. 01-04-2004 clearly states that the current repairs shall not include any expenditure in the nature of capital expenditure. The A.O. observed that the assessee had shifted out of the leased premises to an interim premises for a period of 11 months , during which time the entire renovation work took place which shows that the expenditure was of the nature of capital expenditure and not current repairs. The A.O. observed that the reliance placed by the assessee in the case of CIT v. Madras Auto Service Pvt. Ltd., 233 ITR 468 (SC) is misplaced as this case pertains to the assessment year 1968-69 and does not take into account

Explanation to section 30 which was inserted w.e.f. 1-4-2004 and at that time there was no distinction between current repairs and capital repairs. Similarly the assessee's reliance in the case of CIT v. Hedge Consultancy, 127 Taxman 597 is also misplaced on account of the reasons mentioned above as the case pertained to assessment year 1988-89. Thus, in nutshell the A.O. rejected the contentions of the assessee and held that the expenses of Rs. 37,56,259/- out of repairs and maintenance is capital expenditure and depreciation @ 50% of 10% i.e. 5% was allowed to the assessee while the remaining sum of Rs. 35,68,446/- was added to the total income of the assessee by the AO vide assessment order dated 20-12-2011 passed u/s 143(3) of the Act.

4. Aggrieved by the assessment order dated 20-12-2011 passed by the A.O. u/s 143(3) of the Act, the assessee filed its first appeal before the ld. CIT(A).

5. Before the ld. CIT(A) the assessee reiterated the submissions what was made before the A.O. and submitted that the expenses of Rs. 37,56,259/- was incurred on current repairs as well as expenses incurred on furniture and fixtures which are fixed to the office and cannot be removed without substantial damage and making the item non-usable. It was submitted that the premises was taken on leave and license basis and was not owned by the assessee, hence, the A.O. erred in treating the same as capital expenditure. The assessee submitted that once the rental agreement expires, these items will be removed but the flooring and POP and other such identical expenses cannot be removed and needs to be charged to P&L account. In support, the assessee placed reliance on the following decisions:-

(i) Instalment Supply (P) Ltd. CIT 149 ITR 52 (Del)
(ii) CIT v. Hi Line Pens (P) Ltd. [2008] 306 ITR 182 (Del)
(iii) ACIT v. M.M. Publications Ltd. (2011) 43 SOT 59 (Cochin) (Trib).

The ld. CIT(A) observed that the assessee had spent an amount of Rs. 37,56,259/- on items of floor marbles and its fixing, civil work, flooring, civil work and painting on the premises which was taken on leave and license basis by the assessee and thus was not owned by the assessee. The total amount spent on account of renovation was at Rs. 94,61,331/-, out of which Rs. 57,05,072/- was capitalized by the assessee and balance of Rs. 37,56,259/- was claimed as revenue expenditure. The assessee has also paid separately an amount of Rs. 7,95,548/- as architect fees for the work of renovation. The assessee had shifted out of the lease premise to another premise for a period of 11 months and done the renovation work. The ld. CIT(A) held that the whole renovation work was on account of renovation work which brought into existence an enduring benefit to the assessee during the period of lease, therefore, the A.O. was justified in treating the total renovation expenditure as capital expenditure. The ld. CIT (A) relied on the following decisions:-

1. Hon'ble Bombay High Court in the case of New Shorrock Spinning and Manufacturing Co. Ltd. v. CIT [1956] 30 ITR 338.

2. Hon'ble Andhra Pradesh High Court in the case of Sri Rama Talkies v. CIT [1966] 59 ITR 63

3. Hon'ble Bombay High Court in the case of CIT v. Vasant Screens [1980] 124 ITR 835.

4. Hon'ble Bombay High Court in the case of CIT v. Ballimal Nawalkishore [1976] 119 ITR 292

Thus, it was observed that the assessee had spent a large amount of money on renovation of the premises which has brought a new asset into existence and has resulted in an enduring benefit to the assessee and hence the

addition made by the A.O. was upheld by the learned CIT(A) vide appellate orders dated 29-08-2012.

6. Aggrieved by the appellate order dated 29-08-2012 passed by the ld. CIT(A) , the assessee is in appeal before the Tribunal.

7. The ld. Counsel for the assessee submitted that the assessee has taken a premise on rent on leave and license basis. Expenditure to the tune of Rs. 94,61,331/- was incurred by the assessee towards renovation work, out of which Rs. 57,05,072/- was capitalized by the assessee and balance of Rs. 37,56,259/- was claimed as revenue expenditure as these amounts are expended on items of floor marbles and its fixing, civil work, flooring, civil work and painting on the premise etc. and hence these cannot be removed from the premise hence these are written off as revenue expenditure. The ld. Counsel drew our attention to the paper book page 2 which contains all the details of the repair expenses of Rs. 37,56,259/- such as breaking old plaster, floor marbles and fixing, plastering, floor tiles, filling up the floor, POP work, ceiling work, carpentry work, partition and architect fees etc.

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

9. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has taken the premise on leave and license basis and the assessee have undertaken the substantial renovation work in that premises. Total amount of Rs. 94,61,331/- was incurred towards the above renovation work and out of which an amount of Rs. 57,05,072/- was capitalized by the assessee and while balance of Rs. 37,56,259/- was claimed as revenue expenditure on the ground that the expenses on items which cannot be removed from the premises were incurred, as the amount was incurred on floor marble and its

fixing, POP, civil work, flooring, false ceiling, plastering and painting etc. The ld. Counsel drew our attention to the paper book page 2 wherein the breakup of such repair expenses were given. On perusal of the said details, we find that the expenses were incurred by the assessee such as marble and its fixing, plastering, floor tiles, filling up the floor, POP work, ceiling work, carpentry work, partition and architect fees etc. which has been incurred on premises taken on leave and license basis. While on the other hand the expenses which were capitalized were incurred on fixed assets which can be removed like furniture, AC, office equipment, furniture and fixtures, computers etc. . The assessee also submitted that since this premise is a rental premise no capital asset has been created in favour of the assessee as when the assessee will vacate the premises, these repair expenses to the tune of Rs. 37,56,259/- will not be having any value/utility for the assessee as these cannot be removed and taken along with. Whereas the revenue has contended that the assessee has brought new asset into existence which has resulted into an enduring benefit to the assessee. The Hon'ble Bombay High Court in a recent decision delivered on 29-06-2016 has elaborately discussed this issue in RPG Enterprises Limited v. DCIT in (2016) 71 taxmann.com 137(Bombay) wherein it was held as under:

> ***"5.*** *We find that the appellant was a tenant of the said premises. It was paying monthly rent of Rs. 73,530/- from April, 1995 onwards under the agreement dated 15th February, 1995. Further the agreement provided that the cost of repairs and renovation i.e. civil, electrical, plumbing, polishing etc. would be carried out by the appellant at its own expenses after taking prior permission from the landlord. All the Authorities under the Act have rendered a finding of fact that the so called "repairs and maintenance" were in fact extensive renovation involving civil work. This expense resulted in an advantage/benefit of a enduring nature in as much as it inter alia resulted in the appellant being able to accommodate*

more number of employees and facilitate improving its trading operations. Thus the benefit obtained by the appellant, according to the Authorities was substantially in the capital field and could not be entirely allowed as revenue expenditure. The submission on behalf of the appellant, before us, that as the appellant does not own the premises the expenditure incurred on renovation goes to the benefit of the owner of the said premises, therefore in the hands of the tenant it can only be revenue expenditure is more then met by the impugned order of the Tribunal. This in view of the fact that the impugned order places reliance upon Explanation-I to Section 32 of the Act, which allows depreciation to a tenant in case of any capital expenditure incurred for renovation/improvement to the building in the hands of the tenant by deeming the tenant to be the owner of the premises. In this case the benefit of depreciation has been given to the appellant on the capital expenditure incurred for renovation.

6. *Mr. Jhaveri, learned Counsel for the appellant-assessee then submits that on an identical fact situation expenditure incurred by tenant has been allowed as revenue expenditure by this Court. Therefore it is submitted that the entire issue is no longer open to debate as it stands concluded in favour of the appellant by the decisions of this Court in Talathi & Panthaki Associates (P.) Ltd. (supra) and Hede consultancy (P.) Ltd. (supra). In Talathi & Panthaki Associates (P.) Ltd. (supra) the tenant of the premises had contributed a sum of Rs. 1.50 crores to the work of repairs and restoration/reconstruction of the building in which it was a tenant. The entire amount of Rs. 1.50 crores was claimed as revenue expenditure. The assessee therein had entered into an agreement with the developer to contribute Rs. 1.50crores for the reconstruction/repairs/restoration of the building in consideration of there being no increase in the rent payable by the assessee in the new*

structure to that being paid in the old structure. It was in the aforesaid facts that it was held that where a lump-sum payment of Rs. 1.50 crores gets rid of annual business expenses chargeable against revenue then the lumpsum is to be regarded as a revenue/business expenditure. The benefit obtained by the assessee in the above case was premises at a lower rent in view of the contribution made to the developer for repairing/reconstructing the premises. Thus, the expenditure was in the revenue field and allowable under Section 37 of the Act. In the present facts, nothing is on record to indicate that there was any advantage secured by the appellant in the revenue field. There was no decrease in the rent nor was there any embargo on future increase in the rent in consideration of the expenditure for renovation. Therefore, the above decision would not apply to the facts of the present case.

7. *Similarly, the decision of this Court in Hede consultancy (P.) Ltd. (supra) upon which also reliance is placed upon also dealt with the situation where the amount expended for interior decoration and renovating of a godown premises so as to be converted into an office premises was allowed as a revenue expenditure, will not apply to the present facts. This is because in that case the tenant got the benefit of lower rent in view of the expenditure incurred on renovation. It was in that context that this Court upheld the view of the Tribunal that the expenditure for repairs and renovation was in the revenue field. As pointed out above, in the present case, there is nothing on record to indicate that any benefit was obtained by the assessee in the revenue field for having expended the amount of Rs. 31.32 lakhs for repairs/renovation of the office premises. Thus, the aforesaid decisions would have no application to the facts of the present case.*

8. *It was next contended there is no basis indicated by the Authorities under the Act for apportioning the expenditure in the ratio of 75% and*

25% between capital and revenue account by the Revenue. We find that the authorities on facts found that some of the expenditure incurred out of Rs. 31.32 lakhs was incurred for maintenance such as plastering etc. This allowing of 25% was on the basis of an estimate. Nothing has been shown to us that the estimation by the authorities on the basis of facts found was in any way arbitrary or perverse. Thus we find no merit in the above submission.

9. *In the view taken by us that the expenditure of 75% of Rs. 31.32 lacs i.e. Rs. 23.49 lakhs is on capital account, the submission to claim deduction on account of Section 30 of the Act made by the Appellant need not be examined. Nor the decision of the Delhi High Court in CIT v. Hi Line Pens (P.) Ltd.[2008] 306 ITR 182/ 175 Taxman 132 (Delhi) relied upon for interpretation of Section 30 of the Act need be examined. This for the reason that the Explanation to Section 30 of the Act itself provides that the amount paid on the cost of repairs would not include any expenditure which is in the nature of capital expenditure. Although this Explanation to Section 30 of the Act was introduced in 2004 w.e.f. 1st April, 2004, the Explanation itself clarifies that it has been introduced for removal of doubts. Therefore, it would be applicable even for the period prior 1st April, 2004 including the subject Assessment year. It is for the above reason the learned Counsel for the appellant very fairly did not even attempt to suggest that deduction under Section 30 of the Act would be available even in respect of capital expenditure.*

10. *In the above view, the concurrent finding of fact by the Authorities under the Act that the expenditure incurred claiming to be the repairs and maintenance was in fact on account of renovation of the premises, leading to enduring benefit to the appellant assessee in as much as it enabled the appellant to accommodate larger number of employees and also facilitate its trading operations. This benefit would be available to it*

for a long period of time and thus, was capital in nature. It was in the above view that the Tribunal granted the benefit of depreciation to the extent the claim as revenue expenditure was disallowed.

11. *In the above view, we find that the view taken by the Authorities under the Act including the Tribunal, cannot be faulted as the appellant has failed to establish that the expenditure of Rs. 31.32 lakhs claimed as "Repairs and Maintenance" was in the revenue field. In the above view, the substantial question of law as framed hereinabove in paragraph 2 is answered in the affirmative i.e. in favour of the respondent Revenue and against the appellant assessee.*

12. *The appeal is disposed of in the above terms."*

In our considered view, the ratio of decision of Hon'ble Bombay High Court in RPG Enterprises Limited(supra) is directly applicable in the instant case , and by undertaking of this substantial repairs , it could not be said that no enduring benefit has resulted to the assessee as the said major and substantial renovation work has led to improvements in its trading operations which would bring enduring benefit to the assessee for long period of time and hence is capital in nature. The assessee would be entitled and qualified for availing depreciation in view of the Explanation 1 to Section 32 of the Act despite the fact that the assessee is not the owner of the said premises wherein in the assessee has taken the said premises on leave and license basis. The assessee would be entitled for treatment of expenses such as breaking old plaster, carting away, plastering, POP etc as revenue expenses which are in nature of current repairs in view of provisions of Section 30 of the Act. The AO shall verify the contentions of the assessee on facts and in the light of the afore-stated decision of Hon'ble Bombay High Court in the case of RPG Enterprises Limited(supra) on merits. The issue is therefore set aside and restored to the file of the AO for de-novo adjudication of the issue by the AO on merits. Needless to say proper and adequate opportunity of

hearing shall be granted to the assessee by the AO in accordance with the principles of natural justice and the assessee shall be allowed to submit all relevant evidences and explanations in support of its contentions which shall be admitted by the AO and adjudicated by the AO on merits. We order accordingly.

8. In the result, appeal filed by the assessee in ITA No. 5841/Mum/2012 for the assessment year 2009-10 is allowed for statistical purposes as indicated above.

Order pronounced in the open court on 7th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांकः 07-09-2016 को की गई ।

Sd/-	sd/-
(MAHAVIR SINGH)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **07-09-2016**

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व.नि.स./ R.K., Ex. Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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 "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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