

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A No.1088 /Mds/2016
निर्धारण वर्ष /Assessment years : 2009-2010

M/s. T.M. Abdul Rahman & Sons, **Vs.** The Assistant Commissioner
No.49, Wuthucattan Street, of Income Tax,
Periamet, Non Corporate Circle 6,
Chennai 600 003. **Chennai 600 006.**

आयकर अपील सं./I.T.A .No.1089/Mds/2016
निर्धारण वर्ष /Assessment years : 2011-2012

M/s. T.M. Abdul Rahman & Sons, The Joint Commissioner of
No.49, Wuthucattan Street, Income Tax,
Periamet, **Vs.** Business Circle –XII,
Chennai 600 003. Chennai 600 034.

[PAN AABFT 2029F]
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri. G. Seetharaman, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriyo Pal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 13-10-2016
घोषणा की तारीख /Date of Pronouncement : 16-11-2016

आदेश / ORDER**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

These are appeals filed by the assessee for assessment years 2009-2010 and 2011-2012 directed against orders dated 29.02.2016 of Commissioner of Income Tax (Appeals)-5, Chennai.

2. Appeal for assessment year 2009-2010 is taken up first for disposal.
3. There are seven grounds raised, of which grounds No. 6 & 7 are general in nature needing no specific adjudication.
4. Through its ground Nos.1 & 2, the assessee is aggrieved on the disallowance of cost of replacement of old machinery.
5. Facts apropos are that assessee a manufacturer & exporter of tanned leather and finished leather products had filed return of income for the impugned assessment year disclosing income of ₹1,66,39,750/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had imported certain machinery which were claimed by it as Revenue outgo under the head

spares & maintenance. These items comprised of band knife cutting/ splitting machine costing ₹8,94,726/- and counter molding machine costing ₹3,66,909/-. Assessing Officer was of the opinion that these machinery were capital assets. He disallowed its claim as spares and maintenance expenditure. Out of the aggregate value of ₹12,61,635/- he allowed depreciation of ₹1,89,245/ and made a net disallowance of ₹10,72,390/-.

6. Aggrieved, the assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that the above mentioned items were replacement of old machinery. According to him, cost of replacement of old machinery with new machinery was a Revenue outgo. Ld. Commissioner of Income Tax (Appeals) however, did not accept this contention. He confirmed the order of the Id. Assessing Officer. According to him, band knife cutting machine had the following features.

- (i) *There was a series of three or more pulleys, which provided continuous rotating motion to the knife.*
- (ii) *An endless knife is used.*
- (iii) *Knife used is usually narrower than a straight knife.*
- (iv) *A large size table is used to support the fabric & for cutting.*
- (v) *Air blower, blows the air to minimize the weight of fabric.*
- (vi) *Balls in air blower help move the fabric in different directions.*
- (vii) *Automatic grinder is used.*
- (viii) *Machine is stationary but fabric is movable.*
- (ix) *High speed r.p.m. motor is issued.*

(x) *Knife life time depends on fabric type & uses of machine.*

Further, as per the Id.CIT(A) band knife splitting machine manufactured by Cannroga SPA Italy had the following special features:-

- (i) *No knife trend setting*
- (ii) *Grinding unit suitable for corundum or diamond wheels.*
- (iii) *Easy, single micrometric control*
- (iv) *Flexible, fast setting of bevel width.*
- (v) *Guide gibs group with automatic adjustment.*
- (vi) *Independent exhausters for emery dust and working scraps.*
- (vii) *Moving wheel on precision roller guides.*
- (viii) *Working pressure fast adjustment*
- (ix) *Optical viewer to check bevel symmetry*
- (x) *Digital thickness readout*
- (xi) *Handbook and service tools*
- (xii) *Ergonomic work position to reduce tiredness.*
- (xiii) *Safety devices compliance with CE standards.*
- (xiv) *Low noise level*
- (xv) *Fast replacement guide roll/guide bar without removing joint.*
- (xvi) *Access to all components for an easy and rapid maintenance*
- (xvii) *Life lubricated mechanical components.*

Shoe counter moulding machine, the other machinery claimed by the assessee as replacement, as per the Id. Commissioner of Income Tax (Appeals) had following features.

- (i) *'Shoe counter moulding machine was suitable for molding Gangbao materials, high-grade man shoes and woman shoes, riding shoes, sports shoes and leisure shows before lasting.*

- (ii) *Inclinable toe ensured easy operation, the temperature of outer and inner moulds could be adjusted according to the materials.*
- (iii) *The machine had a special wiper and suitable for manufacturing all kinds of stitch down shoes.*
- (iv) *The projection light could ensure the most accurate moulding location, and the adjustable clamp could make the vamp and toe with 100% accuracy.*
- (v) *Adopted computer controlled system with function of automatic testing, automatic fault alarm, and indicate fault source and position on the screen, and it is was convenient for maintenance.*
- (vi) *Adopted environmental protection water cooling type refrigerating system, and ensured quick cooling speed and 20C refrigerating temperature.*
- (vii) *After moulding, the inner, rubber, piece and vamp were closely integrated without wrinkle, deformation and budge".*

Thus according to him, these machinery items were not spares but each was a complete machine by itself. He thus upheld the order of the Assessing Officer.

7. Now, before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that cost of replacement of old machine could only be considered as Revenue outgo.

8. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

9. We have considered the rival contentions and perused the orders of the authorities below. The features of the machinery imported by the assessee from Italy has been captured by Id. Assessing Officer and these features have been reproduce by us at para 6 above. Though assessee states that these were replacement of old machines, it could not show which machinery were placed and what was the realization from scrap value of the replaced machinery, if any. Features of the machinery show that these were independent and could work on its own and were not something that would work only in adjunction with another machinery. In our opinion, lower authorities were justified in treating the purchase as a capital expenditure. We do not find any reason to interfere with the orders of the lower authorities.

10. Ground Nos. 1 & 2 stand dismissed.

11. Vide its ground Nos. 3 to 5, the grievance of the assessee is that depreciation on machinery costing ₹27,52,404/- was not allowed.

12. Fact apropos are that assessee had imported a second hand splitting machine called "SCIMATIC X6" on 25.08.2008 at a cost of ₹27,52,404/-. Invoice copy issued by M/s. Turner who had sold the machine to the assessee had in it a condition that it belonged to the seller, till full payment were made. Against the sum of ₹27,52,404/- assessee had paid ₹5,61,774/- before the end of the relevant assessment year. M/s. Turner appeared as a trade creditor for the balance sum of ₹21,90,630/- in the accounts of the assessee. Assessing Officer was of the opinion that the said machinery was not owned by the assessee and there were disputes regarding the condition of the machine. He disallowed the depreciation of ₹4,12,760.60 on the above machine.

13. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that the machine was already installed in its factory and used by it. Hence, according to it depreciation claimed had to be allowed. Id. Commissioner of Income Tax (Appeals) however was not appreciative of this contention. According to him, assessee himself had stated that the machine was not cutting the leather according to specification mentioned by the seller. As per the Id. Commissioner of Income Tax

(Appeals) assessee required the machine to cut the leather with one millimeter thickness but machine supplied by M/s. Turner could give only one and half millimetre thickness. Thus, he confirmed the disallowance made by the Id. Assessing Officer.

14. Now before us, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that assessee had the installed machine and used it. According to him, the disallowance was made without considering the claim of the assessee that it was used in its business. Reliance was placed on a certificate issued by one Shri. E.M. Ulaganathan, Chartered Engineer in this regard.

15. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

16. We have considered the rival contentions and perused the orders of lower authorities. Assessee itself has stated that machine imported from M/s.Turnver was not according to its specification. As per assessee, the balance amount was withheld by it due to fault in the machine supplied. No doubt, legal ownership by itself is not a fundamental requirement for a claim of depreciation. However, the

machine if not used should be atleast ready to use. Assessee's own admission is that the machine was not in accordance with the agreed specification. In our opinion, assessee was not able to show that the machine was actually used by it or kept in readiness for use. Certificate from Shri. E.M. Ulaganathan, does not say that machine were ready for use. No record showing any trial run was produced by the assessee. In such circumstances, we are of the opinion that the claim was rightly disallowed by the lower authorities. We do not find any reason to interfere with the orders of the lower authorities. Grounds 3 to 5 of the assessee is dismissed.

17. Now, we take up appeal of the assessee for the assessment year 2011-2012. Assessee has altogether raised thirteen grounds. However, its grievance raised though these thirteen grounds is summarized in its ground No.01, which has been divided into nine sub-parts.

18. First issue raised by the assessee is a disallowance of commission of ₹99,79,376/- paid to non-resident agent.

19. Facts apropos are that assessee had filed a return disclosing an income of ₹2,26,17,293/-. During the course of

assessment proceedings, it was noted by the Id. Assessing Officer that assessee had paid sales commission to the following agents abroad.

Sl.No	Nature of expenses	Amount
1	Nimapal International, Tokyo, Japan	6,33,026
2	Parpia International, Singapore	34,92,947
3	Tadashi Iwane, Japan	19,188
4	Feather Touch Ltd, HongKong	1,83,222
5	Joypop Corporation, Tokyo, Japan	56,825
6	Ullmer Gmbh, Mathias, Germany	1,50,396
7	Yammoto Tatsufumi, Japan	29,316
8	R & C Trading SAS, Italy	7,15,531
9	M/s. Blue Lake International Ltd, Hong Kong	7,260
10	M/s. Blue Lake International Ltd, Hong Kong	2,52,026
11	Venturini & Co., Villafranca di Verona (VR)	44,36,642
	Total	99,76,379

Assessing Officer required the assessee to explain why the above payments should not be disallowed for non deduction of tax at source. Explanation of the assessee to the Assessing Officer was as under:-

- a. Foreign agent sends the requirement of the customers to their local agents.*
- b. Local agents in turn communicate the foreign customers' requirement to the firm.*

- c. The firm offer them with the price and quantity and are passed on to the foreign agent through local agent.*
- d. After the goods are ready, local agent inspects the goods and shipment is made.*
- e. Foreign agents meets the customer if there are any complaints in shipment.*
- f. After the firm receives the payment, local agent issue Debit note to the firm as per agreed percentage of commission mentioned in the contract documents.*
- g. Make the payment after deducting the TDS for the commission paid to the local agents and no TDS is effected on the payment made to foreign agent”.*

However, Assessing Officer was of the opinion that by virtue of Explanation 4 to Sec. 9(1)(i) read along with Explanation 2 to Sec. 195(1), brought into the Act by Finance Act, 2012 with retrospective effect from 01.04.1962, any payments received by a foreign entity from an Indian entity, if there was an indirect or remote business connection would attract tax in India. Assessee having not deducted tax on the above payments to the non-resident agents, Id. Assessing Officer applied section 40(a)(i) of the Act, and disallowed the sum of ₹99,79,376/-.

20. In its appeal before Id. Commissioner of Income Tax (Appeals), argument of the assessee was that foreign agents were rendering marketing services outside India and they had no business connection in India. According to the assessee, it was not obliged to deduct tax on payments to the non residents agents. However, Id.

Commissioner of Income Tax (Appeals) was not appreciative of this contention. According to him, assessee was not directly dealing with these foreign agents. These Foreign agents were working for local agents, and it was the local agents who were working for the assessee. According to Id. Commissioner of Income Tax (Appeals) assessee was obliged to deduct tax on such payments. He confirmed the disallowance.

21. Now before us, Id. Authorised Representative strongly assailing the orders of lower authorities, submitted that similar payments for non resident agents had come up before this Tribunal in Revenue's appeal for the assessment year 2010-2011 in assessee's own case in ITA No.2252/Mds/2013. As per the Id. Authorised Representative for that year, the Id. Commissioner of Income Tax (Appeals) had deleted the disallowance made for want of deduction of tax at source. As per the Id. Authorised Representative against the order of the Commissioner of Income Tax (Appeals) Revenue had preferred an appeal before this Tribunal. Id. Authorised Representative, pointed out that Tribunal had confirmed the order of the Id. Commissioner of Income Tax (Appeals). For the impugned assessment year also, according to him, payments effected were

similar and the claim ought not have been disallowed u/s.40(a)(i) of the Act.

22. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

23. We have considered the rival contentions and perused the orders of the authorities below. We find that similar payments of commission made by the assessee during the previous year relevant assessment year 2010-2011 had come up before this Tribunal in Revenue's appeal. It was held *in ITA No.2252/Mds/2013, dated 8.05.2014 at para 4 to 6 as under:-*

"4. It is seen that wherever the commissions were paid by the assessee to local agents, taxes have been deducted at sources as per law. Only in the case of non-resident agents that the assessee did not deduct any tax on the ground that those non-resident agents did not have any income arising in India on account of the commission paid by the assessee.

5. In the present case, the disputed agents were nonresidents. Those non-resident agents are carrying on the business wholly outside India. The assessee had paid commission to those non-resident agents for services rendered by them wholly outside India. It also has to be seen that the non-resident agents did not have any permanent establishment (PE) in India. The commissions were remitted by the assessee directly to the non-residents outside India.

6. In the facts of the case as stated above, we find that the Commissioner of Income Tax (Appeals) is justified in holding that the payments of commission made by the assessee to the non-resident agents were not chargeable to tax in India in the hands of those non-resident agents. When no income is generated to the non-residents within India, those non-

resident agents are not liable for any levy of income tax on account of the commissions they earned out of the services rendered outside India for the assessee. TDS arises only where there is a corresponding tax liability in the hands of the payee”.

For assessment year 2010-2011, also commission paid by the assessee to the foreign agents were through local agents. There is no case for the Revenue that assessee had failed to deduct tax on commission paid to local agents. Fact situation being same we are of the opinion that decision of the Tribunal for the assessment year 2010-2011 would apply here also. Commission paid by the assessee could not have been disallowed for want of deduction of tax at source. We delete the disallowance. Ground No.1(a) of the assessee stands allowed.

24. Vide ground No.1b, grievance raised by the assessee is on disallowance of interest ₹4,80,000 paid to close relatives of the assessee.

25. Facts apropos are that certain loans creditors appearing in its books of the assessee were relatives of the partners of the assessee. As per Id. Assessing Officer, assessee was paying interest @12% on bigger credits and 18% on smaller credits. Ld. Assessing

Officer restricted the interest to 15%. Resultant disallowance came to ₹4,80,000/-.

26. Aggrieved, Assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that interest paid was not in excess of the market rate. According to assessee, there was no security given by it for the loans provided by the relatives and hence 18% interest was sustained. The Id. Commissioner of Income Tax (Appeals) was however, not appreciative of this contention. According to him, assessee could not show why interest at the rate of 18% was paid to its family members.

27. Now, before us, the Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that Id. Assessing Officer had went by bank rate of interest. According to him, presumption that bank lends money at 15% interest was itself wrong. According to him, assessee had not given any security for the loans and hence higher interest payments were justified.

28. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

29. We have considered the rival contentions and perused the orders of the authorities below. Reason why Id. Assessing Officer disallowed the claim was that assessee was paying lower interest to bigger credit whereas higher interest for smaller credits. It is not disputed by the Revenue that interest paid by the assessee never exceeded 18%. Assessing Officer did not bring anything on record to show that Scheduled Banks were charging only 15% interest on loans given, without security. The old adage that risk and returns go together should apply to loans without security. It is natural for persons providing loans without security to demand higher rate of interest. We are therefore of the opinion that interest of 18% paid by the assessee could not be considered as excessive. Application of Sec. 40A(2) of the Act was not warranted. In the facts and circumstances of the case, we delete the disallowance of ₹4,80,000/-. Ground No.1b of the assessee stands allowed.

30. Vide ground No.1c, grievance of the assessee is on disallowance of ₹45,230/- u/s.40A(3) of the Act.

31. Ld. Counsel for the assessee submitted that he was not pressing this ground. Hence ground No.1c is dismissed as not pressed.

32. Vide Ground No.1d, grievance of the assessee is on disallowance of depreciation on machinery purchased from M/s. Turner.

33. This issue is similar to ground Nos. 3 to 5 by the assessee in its appeal for the assessment year 2009-2010 in ITA No.1688/Mds/2016. At para 16 above, we have held that the disallowance was rightly made by the Id. Assessing Officer. Fact situation remaining the same, we do not find any reason to interfere with the orders of the lower authorities. Ground No.1d of the assessee stands dismissed.

34. Vide ground No.1e, grievance of the assessee is that foreign travel expenditure of ₹1,25,000/- was disallowed

35. Ld. Counsel for the assessee submitted that he was not pressing this ground. Hence ground No.1e is dismissed as not pressed.

36. Vide ground No.1f, grievance of the assessee is on a disallowance of interest of ₹1,20,000/- u/s.36(1)(iii) of the Act.

37. Facts apropos are that assessee had paid a sum of ₹10,00,000/- to M/s. MBS Arabic College on 25.06.2010. which was received back on 01.12.2010. However, assessee had not charged any interest for the amount advanced. Explanation of the assessee was sought. Reply of the assessee was that amount was given on commercial expediency, since children of its employees were studying in this college. However, Assessing Officer was not impressed by this reply. Similarly, ₹10,00,000/- was paid by the assessee to SITDA on 17.09.2010 which was received back on 31.03.2011. Explanation of the assessee was that SITDA was the association of tanners, and loans were given for commercial reasons. However, Id. Assessing Officer was not impressed by this reply also. According to Id. Assessing Officer, assessee ought to have charged interest at 12% on the above loans. He calculated notional interest @12% and made an addition of ₹1,20,000/-. The Id. Commissioner of Income Tax (Appeals) on assessee's appeal confirmed this addition.

38. Now before us, Id. Authorised Representative submitted that the loans were given considering commercial necessity. According to him, assessee was obliged to give advance to the college since children of its employees were studying in the said college. As per Id. Authorised Representative the college was situated in close proximity.

So far as loans given to SITDA, as per the Id. Authorised Representative association of tanners of which assessee was a member. According to him, not charging interest on these loans was a business decision taken by the assessee. Ld. Authorised Representative submitted that Assessing Officer fell in error in making a notional addition.

39. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

40. We have considered the rival contentions and perused the orders of the authorities below. Revenue has not disputed the argument of the assessee that MBS Arabic College was situated in close proximity to the assessee's factory and children of assessee's employees were studying there. In so far as payment to SITDA is concerned, it was an association of tanners where assessee was a member. Loan to MBS Arabic College and SITDA were for periods less than six months. In our opinion, lower authorities ought not have sat in the chair of the assessee and decided on the commercial expediency of the loans given to these entities. The facts and circumstances did not call for any addition of national interest.

Addition of ₹1,20,000/- stands deleted. Ground No.1f of the assessee stands allowed.

41. Vide ground No.1g, grievance of the assessee is on disallowance of travel expenditure of ₹3,58,275/-, for non deduction of tax at source.

42. Facts apropos are that assessee had paid van charges of ₹3,58,275/- to one Shri. E. Shammel Ahmed, for transporting its workers from Arcot to its factory at Periamet. Explanation of the assessee was that the van owned by Shri. E. Shammel Ahmed, was used for transporting its workers and Sec. 194C of the Act would not be attracted to the payments. However, Assessing Officer was of the opinion that payments were covered by Sec. 194C of the Act. Assessee having not deducted TDS, Assessing Officer applied Sec 40(a) (ia) of the Act and made a disallowance of ₹3,58,275/-. This disallowance was confirmed by the Id. Commissioner of Income Tax (Appeals)

43. Now before us, Id. Authorised Representative, strongly assailing the orders of the lower authorities submitted that payments were effected on behalf of the employees. Assessee was only a

conduit for paying amount, which otherwise was payable by the employees who used the van. According to him, Sec.194C of the Act could not be applied for such payments.

44. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

45. We have considered the rival contentions and perused the orders of the authorities below. Sec. 194C is reproduced hereunder:-

"Any person responsible for paying any sum to any resident (hereafter in this section referred to as the Contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, which is earlier, deduct an amount equal to(i) (ii).....of such sum as income tax on income comprised therein....."

Assessee's claim that the payments were effected on behalf of its employees for their travel from Arcot to its Factory, could have been accepted if had deducted such transportation charges from the wages paid to them. Nothing has been produced to show any such deduction effected by the assessee. Obvious conclusion is that the transport charges were paid by assessee directly. In our opinion, Sec. 194 C of the Act will clearly apply. We are of the opinion, that Id.

Assessing Officer was justified in applying provisions of Sec. 40(a)(ia) of the Act for want of deduction of tax at source. No interference is required. Ground No.1g stands dismissed.

46. Vide ground No.1h, grievance of the assessee is on a disallowance of Municipal Taxes of ₹90,882/-

47. Facts apropos are that Id. Assessing Officer found that assessee had claimed a sum of ₹90,882/- as payments to M/s. Bruhuth Bangalkore Mahanagara Palika (BBMP). Explanation of the assessee was that this was property tax payment on a property owned by a partner, but partly used by assessee firm. Assessing Officer was of the opinion that assessee could not show use of any such premises for its business. He disallowed a claim of ₹90,882/-. The disallowance was confirmed by Id. Commissioner of Income Tax (Appeals) on assessee's appeal.

48. Now before us, the Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that property was used by the assessee firm and therefore the claim had to be allowed.

49. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

50. We have considered the rival contentions and perused the orders of the authorities. Claim of the assessee is that property on which property tax was paid was owned by a partner of the assessee firm and was used by assessee firm. However, Id. Assessing Officer has given a clear finding that there were no branches or establishment for the assessee in Bangalore, after verifying its Audit report in form 3CD. We, are therefore of the opinion that assessee could not show its use of the property on which property tax was paid. In our opinion , the disallowance was correctly made. Ground No.1h of the assessee stands dismissed.

51. Vide ground No.1i, grievance of the assessee is on disallowance of ₹29,68,236/-.

52. Ld. Assessing Officer noted during the course of assessment proceedings, that assessee had claimed the following expenses as Revenue outgo.

Particulars	Amount claimed ₹
Sony Cameras	75,000
Borewell	36,681
Effluent Treatment plant	4,02,000
Road expenses	3,89,820
Conference Hall expenses	5,59,243
Machinery repairs	18,85,281
Total	33,48,025/-

Assessing Officer put the assessee on notice as to how the above expenditure could be claimed as Revenue outgo. Explanation of the assessee was that Sony cameras were given as incentives to its employees as part of its staff welfare measure. Vis-a-vis borewell expenditure, explanation of the assessee was that it was incurred for repairing an existing borewell. Viz-a-viz effluent treatment plant claim of the assessee was that an old plant had become obsolete and expenditure incurred was for replacement of such old plant with a new plant. As for the road expenditure, its explanation was that these were incurred for repair of existing road and not for a new road. In so as conference hall was concerned, claim of the assessee was that it was repair charges and not construction of a new hall. For machinery repairs, claim of the assessee was that these represented purchases made for replacing worn out machinery and did not constitute any independent machinery. However, Assessing Officer was not

agreeable to the above submissions. According to him, the expenditure were all incurred for acquiring capital assets. He allowed depreciation on these items. Against the claim of ₹33,48,025/- depreciation of ₹4,42,866/- was allowed and balance ₹29,05,159/- was disallowed.

53. Assessee's in appeal before Id. Commissioner of Income Tax (A) on these disallowances did not meet with any success.

54. Now before us, Id. Authorised Representative submitted that Sony cameras were given as gift to employees of the assessee. Confirmation obtained from employees, on receiving such gifts were on record. According to him, assessee has gifted six Sony Cameras and one digital recorder to its employees. The lower authorities ignored the confirmation of the employees and made an addition. In so far as borewell expenditure was concerned, as per the Id. Authorised Representative the borewell could not be used and hence the outgo was pure business loss. As for effluent treatment plant, Id. Authorised Representative submitted that this was incurred for replacement of an old plant. In so far as road expenditure was concerned, as per Id. Authorised Representative there was no new road laid by the assessee. Conference hall expenditure, as per the Id.

Authorised Representative were expenditure incurred on repairs of an existing conference hall. In so far as, machinery repairs were concerned, as per the Id. Authorised Representative, lower authorities erroneously considered it as a capital outgo.

55. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

56. We have considered the rival contentions and perused the orders of the authorities. In so far as expenditure incurred for Sony camera and one digital recorder are concerned, employees of the assessee had acknowledged receipts of the items from assessee. Claim of the assessee is that this was a gesture of staff welfare and incurred to keep the employees motivated. In our opinion this expenditure cannot be treated as a non business outgo. Sony cameras and digital recorder having been given to its employees, could never form part of the assets of the assessee. Hence disallowance of the cost of Sony camera and digital recorded were not warranted.

57. Coming to the borewell expenditure, claim of the Id. Authorised Representative is that there was no water in the borewell, hence, it is a loss. What we find is that Id. Assessing Officer has placed

specific reliance on a bill issued by M/s. Andal Motors for fixing a motor and pump to the borewell. If there is no water in the borewell, then there is no question of fixing a motor. Thus, claim of the assessee that bore well expenditure was a business loss having derived no water is incorrect. In our opinion, cost of borewell was rightly considered as capital outgo.

58. Coming to the effluent treatment plant, we find that earlier plant has become obsolete and it was a new plant erected. We are of the opinion that lower authorities had rightly treated the plant as capital outgo, since its was an independent machinery item.

59. Coming to the road repair expenditure claimed by the assessee, contention of the assessee was that no new road was laid but it was only a repair of existing road. Ld. Commissioner of Income Tax (Appeals) has given a clear finding that expenditure was incurred for construction of cement road and not repair of existing road. Assessee could not produce the contract agreement entered with Shri. M. Shivaraj, who was entrusted with the above work to prove that the contract was only for repair of existing road and not laying of new road. Therefore, we are of the opinion that lower authorities were justified in treating the expenditure incurred on road as capital outgo.

60. Coming to the conference hall expenditure, it is not disputed by the assessee that expenditure was incurred for changing the interiors of existing conference hall, including seating, painting and furniture. The outgo was clearly for renovation. We are of the opinion that renovation of existing conference would not create any new capital asset. The expenditure could only be considered as necessary for effectively continuing the functionality of the existing conference hall. Said expenditure in our opinion could not be treated as capital outgo.

61. Coming to the machine replacement cost, the Id. Assessing Officer has brought out various items included in such claim at page 15 of his assessment order which is reproduced hereunder:-

Sl .No	Date of expenditure debited	Nature of expenditure	Amount of expenditure
1	20.7.2010	Payment to Kumar Eng. Company – Purchase of 1HP Jet Motor (debited to building repair expenses)	7,190
2	20.04.2010 02.08.2010 29.09.2010	Payment made to Katte & Nattan, Chennai. 1. Bharat 7.5 HP Motor 2. Bill No.1126 10HP RPH Motor 1 3. Bill No.1639 Bharat 10HP Motor	13,323 26,448 15,719
3	08.12.2010 31.12.2010	Payment made to Mayura Indl. Ser. Chennai. 1. Bill No.1298 Control Panel for AC Drive 2. Bill No.1445 AC Drive	30,797 11,419

4	15.07.2010 15.07.2010	Payment to Mikro Zone Technologies Bill No.86-12V/135 AH Battery Bill No.87 5KVA online UPS & 1 No.12v /17AH Battery 2 Nos.	17,437 48,464
5	23.09.2010	Payment made to S.S. Associates- Bill No.279 Refrigerated Air Dirs 3 Nos.	1,03,646
6		Ratha Fan House B No.98528 Racold water heater	14,280
7	02.04.2010	Machinery Repair Expenses Bill No.002, Tumble Drier Thermetic Flued Line Material	61,740
8	15.04.2010	G.K. Systems Vellore B. No.23691015 – 600 VA Kevin Home UPS 1 No. & 100 AH 12 V Exide battery 1 No. (TMAJ) personal in nature (machinery repairs expenditure)	14,000
9	11.05.2010	Gopi Engineering works – Bill no. 05 Reversible settings	61,739
10	12.07.2010	New Tech Machines Bill No.34, Air com spray gungs	1,04,000
11	18.07.2010	S.V. Industries Bangalore Bill No.76, Hydraulic Hand pallet Truck 2 No	26,520
12	27.08.2010	Kelcom Power Systems B No.13191027 100 AH Exide battery 2	13,000
13	30.09.2010	Industrial Blowers Bill No.465, M/s. Fabricated blower	41,600
14	31.10.2010	Rathna Fan House Purchase of fans	21,440
15	25.11.2010	Vinar Systems Pvt. Ltd Bill No.258, Conveyor over heads- Drive unit	3,90,915
16	22.12.2010	Delton Air Control Bill No.1011 to way manifold value	99,320
17	01.01.2011	JSP Plastics, Kanchipuram Bill No.56, Overhead Conveyor clip & Conveyor frame	2,95,152
18	03.01.2011	Bill No.2, Bharath 20HP 4 pole 1440 RPM Foot mouter motor 1 Nos.	32,500
19	06.01.2011	Vinar Systems Pvt. Ltd. Kolkatta – Bill No.165 labour charges for erection job of conveyor over head 600ft	99,270
20	23.02.2011	Ecotech Services, Hosur Bill No.54, Agitator Assembly	1,01,590

21	22.11.2010 11.12.2010	Payment to Gajalakshmi Engineering works Bill No.56 Bill No.562, New Tanker Assembly material	40,000 60,000
22		G.K. Systems, Vellore UPS related expenses	65,820
23	19.08.2010	Elect Engineering Bill No.29, Rolling shutters	37,402
24	04.10.2010	Bill No.50, 2 ton lift outside	30,550
		Total	18,85,281

A reading of the above would clearly show that many of the items could be considered as independent machinery whereas some of them like batteries, etc could be considered as spares and repair works. We are of the opinion that Id. Assessing Officer ought have made a detailed analysis of the bills and correctly demarcated the items. Disallowance ought have been confined only to those which could be considered as independent machinery. Thus this issue requires a fresh look by the Id. Assessing Officer.

62. Thus, we delete the disallowance on the claims on Sony Camera and conference hall expenditure, while uphold the disallowance of Borewell, Effluent treatment plant and road expenditure. In so far machinery expenditure is concerned, we set aside the orders of the lower authorities to the file of the Id. Assessing

Officer for consideration afresh in accordance with law.

63. In the result, the appeal of the assessee for assessment year 2009-2010 is dismissed whereas that for assessment year 2011-12 is treated as partly allowed.

Order pronounced on Wednesday, the 16th day of November, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:16th November, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |