

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 215/VIZ/2017
(Asst. Year : 2012-13)**

ACIT, Circle-2(1),
Guntur.

vs.

M/s. Tirumala Milk Products
Pvt. Ltd., D.No. 12-8-8,
Prakash Nagar, Narasaraopet,
Guntur District.

(Appellant)

PAN No. AABCT 7907 M
(Respondent)

**C.O.No.46/VIZ/2017
(ITA No. 215/VIZ/2017)
(Asst. Year : 2012-13)**

M/s. Tirumala Milk Products
Pvt. Ltd., D.No. 12-8-8,
Prakash Nagar, Narasaraopet,
Guntur District.

vs.

ACIT, Circle-2(1),
Guntur.

PAN No. AABCT 7907 M
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. V. Madhuvani – CIT DR

Date of hearing : 15/09/2017.

Date of pronouncement : 13/10/2017.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the revenue and the cross objection by the assessee are directed against the order of the Id. CIT(A)-1, Guntur, dated 31/01/2017 for the Assessment Year 2012-13.

2. Facts of the case, in brief, are that the assessee-company engaged in trading of milk and milk products, has filed its return of income by declaring total income of ₹ 39,92,80,150/-. The case of the assessee was selected for scrutiny and the assessment is completed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), wherein the Assessing Officer has disallowed expenditure incurred on replacement of plastic cans and crates of ₹56,47,189/- claimed by the assessee as revenue expenditure. During the course of assessment proceedings, Assessing Officer has noted that the assessee has debited an amount of ₹1,49,26,080/- and 1,41,16,256/- towards purchase of milk cans and plastic crates respectively. As this expenditure is capital in nature, the assessee was asked to explain as to why the same should not be capitalised. In response, the assessee stated that life span of plastic crates and cans is short, and expenditure is recurring in nature hence, it is revenue expenditure, accordingly allowance was claimed. In order to support its stand, the assessee filed a copy of the decision of ITAT, Visakhapatnam Bench in the case of assessee itself for the Assessment Year 2005-06 in ITA No. 242/VIZ/2009, by which the tribunal uphold the claim of the assessee.

3. On appeal, Id. CIT(A) by following the decision of the ITAT, Visakhapatnam Bench for the Assessment Year 2001-02 & 2002-03 and also by considering the Assessment Year 2008-09 in ITA No.

282/VIZ/2011, by order dated 12/04/2012, allowed the appeal filed by the assessee, treating the claim as revenue expenditure. The relevant portion of the order is extracted as under:-

"3. We have heard the rival contentions and perused the record. We notice that the Learned CIT(A) has followed the decision dated 19-03-2008 rendered by the co-ordinate bench of the Tribunal in the assessee's own case relating to the assessment years 2001-02 and 2002-03, wherein the Tribunal, on identical set of facts, has held that the expenditure incurred on replacement of cans and crates is revenue in nature. "

4. On being aggrieved, revenue carried the matter in appeal before the Tribunal.
5. Learned Departmental Representative has relied on the order passed on the by Assessing Officer, whereas learned counsel for the assessee has relied on the order passed by the Id. CIT(A).
6. We have heard both the sides, perused the material available on record and orders of the authorities below.
7. The assessee is in the business of purchase of milk and milk products. The assessee has purchased plastic cans and crates and for the purpose of transportation of milk, he claimed expenditure incurred on plastic cans and crates is revenue expenditure. The Assessing Officer has allowed the same as capital expenditure. On appeal, Id.CIT(A) by following the decision of the ITAT in assessee's own case for the Assessment Year 2001-02 & 2002-03 in ITA Nos. 433/VIZ/2005 & 435/VIZ/2005, by order dated 19/03/2008, and also by following the decision in assessee's own case for the Assessment Year 2005-06 in ITA No. 242/VIZ/2009 by order dated 04/02/2011, and also by following

the decision of the ITAT in assessee's own case in ITA No.282/VIZ/2011 for the Assessment Year 2008-09 by order dated 12/04/2012, allowed expenditure incurred by the assessee as revenue expenditure. In this case, learned Departmental Representative only pointed out that against the orders passed by the tribunal for the earlier years, Department has preferred an appeal, except that, he has not pointed out anything from the order of the Id. CIT(A). In view of the above, by following the decision of the coordinate bench of the tribunal in assessee's own case for various assessment years as mentioned above, the Id. CIT(A) allowed the appeal of the assessee. We find no infirmity in the order passed by the Id. CIT(A). Therefore, the appeal filed by the revenue is dismissed.

8. In regard to cross Objection filed by the assessee is only in support of the order passed by the Id. CIT(A). In view of our decision in preceding paragraphs, the cross objection has become infructuous and the same is liable to be dismissed. Accordingly, cross objection filed by the assessee is dismissed.

9. In the result, appeal filed by the revenue and the cross objection filed by the assessee are dismissed.

Order Pronounced in the open Court on this 13th day of October, 2017.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 13th October, 2017.

vr/-

Copy to:

1. The Assessee - M/s. Tirumala Milk Products Pvt. Ltd., D.No. 12-8-8, Prakash Nagar, Narasaraopet, Guntur District.
2. The Revenue - ACIT, Circle-2(1), Guntur.
3. The PCIT, Guntur.
4. The CIT(A)-1, Guntur.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.

