

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 4669/DEL/2015 (A.Y 2010-11)**

Hi-Tech Gears Ltd. 14 <sup>th</sup> Floor, Millennium Plaza, Tower-B, Sushant Lok 1 Gurgaon AAACH0156K <b>(APPELLANT)</b>	Vs	DCIT Circle-11(2) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ved Jain, Adv, Sh. Ashish Gopal, CA &amp; Sh. Rishabh Jain, CA</b>
<b>Respondent by</b>	<b>Sh. Amit Katoch, Sr. DR</b>

<b>Date of Hearing</b>	<b>28.05.2019</b>
<b>Date of Pronouncement</b>	<b>06.06.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 30/04/2015 passed by CIT(A)-XV, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

*"1. That on the facts and in the circumstances of the case and under the provisions of the law, the Ld. Commissioner of Income Tax (Appeals) erred has erred in uphold a disallowance of Rs. 55,70,068/- (Net of Depreciation) out of Repair and Maintenance to Building. "*

3. During the Financial Year relevant to Assessment Year 2010-11, the assessee company was engaged in the business of manufacturing of gears and

shaft. The assessee filed return of income declaring total income of Rs. 24,02,33,040/- on 14/10/2010. Notice u/s 143(2) was sent on 29/09/2011. The case was manually selected for scrutiny and again notices u/s 143(2) & 142(1) was issued on 12/09/2012. Subsequently, notices u/s 143(2) & 142(1) were issued on 31/10/2012. In compliance to the statutory notices Senior GM, Finance and Deputy Manager Taxation/ Authorized Representative appeared from time to time. The Assessing Officer made various additions including the disallowance of current repair out of Repairs and Maintenance of building which is contested in the present appeal.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee incurred expenditure for fixing Alco Bond Sheets on outside wall of the factory building to maintain the present structure and also incurred expenditure in respect of interior work which cannot be assumed to create any new asset. The Ld. AR further submitted that the assessee incurred expenditure only for keeping an existing asset into its present condition. Also the assessee has not carried out any extension to the existing building, which could classify the said expenses as capital expenditure. The Ld. AR submitted the assessee explained in detail as regards to the nature of the expenditure and also submitted copies of all bills. The Ld. AR further submitted that no adverse material was brought on record by the Assessing Officer to substantiate its claim that the said expenses were giving an enduring benefit to the assessee. The Ld. AR submitted that the decisions of the Hon'ble Apex Court relied upon by the CIT(A) are not applicable in the present case as assessee incurred expenses on renovation of building and not on the replacement of asset as were the facts in those case laws referred by the CIT(A). The Ld. AR submitted that the real test is whether all those acts constitute replacing the existing asset. The existing asset is the building. When no extra space was added on account of such repairs, it cannot

be said that a new asset has come into existence. All these repairs are done to preserve and maintain an already existing asset. In the course of such repairs, if they have upgraded the facilities by fixing of Alco Bond sheets on outer walls of the building, then that would not constitute a new asset or a new advantage. The Ld. AR relied upon the following decisions:

- i) CIT vs. M/s MAC Charles (India) Ltd. ITA No. 488/2009 order dated 17.11.2014 (Kar. HC)
- ii) CIT vs. TS Tech Sun India Ltd. ITA No. 335/2012 order dated 03.07.2012 (Del. HC)
- iii) Norma India Ltd. vs. ACIT ITA No. 1971/Del/2014 order dated 29.06.2016 (ITAT Del.)
- iv) DCIT vs. Ikea Trading (India) Pvt. Ltd. ITA No. 5393/Del/2010 order dated 02.06.2016 (ITAT Del.)
- v) DCIT vs. Ahmedabad Packaging Industries Ltd. ITA No. 2375/Ahd/2013 order dated 11.05.2017 (ITAT Ahd.)
- vi) Sarang and Associates vs. DCIT ITA No. 1961/Mum/2015 order dated 24.11.2016 (ITAT Mum.)
- v) ABM Steels Pvt. Ltd. vs. ACIT ITA No. 1855/Ahd/2011 order dated 24.04.2015 (ITAT Ahd.)

6. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT Vs. Mahalaxmi Mills Ltd 1967 SCR (3) 957 wherein it is held that extent of permissible repairs will depend upon the nature of machinery employed by the assessee. If a part of a machine becomes unserviceable due to wear and tear, replacement of such part will be covered by the expression "current repairs" for purpose of Section 31(i) even though the expenditure thereon substantial. The Ld. AR further submitted that expenditure cannot be covered as current repairs, the same is eligible u/s 37(1) of the Income Tax Act as revenue expenditure because neither is it a capital expenditure nor covered u/s 30 to 36 of the Income Tax Act. Section 30 & 31 only refer to current repairs and, therefore, non-current repairs, which are not capital in nature,

can be claimed u/s 37 of the Income Tax Act. Therefore, the expenditure is eligible either u/s 30 or u/s 37(1) of the Income Tax Act as per the submissions of the Ld.AR.

7. The Ld. DR relied upon the order of the CIT(A) and assessment order.

8. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee incurred expenditure for fixing Alco Bond Sheets on outside wall of the factory building to maintain the present structure and also incurred expenditure in respect of interior work. The assessee incurred expenditure only for keeping an existing asset into its present condition. Besides this, the assessee has not carried out any extension to the existing building, which could classify the said expenses as capital expenditure. The Assessing Officer has not brought any material on record to show that it is an adverse material contrary to the bills and the work carried out by the assessee and the said expenses were giving an enduring benefit to the assessee. All these repairs are done to preserve and maintain an already existing asset. In the course of such repairs, if they have upgraded the facilities by fixing of Alco Bond sheets on outer walls of the building, which do not constitute a new asset or a new advantage. The contention of the Ld. AR that expenditure cannot be covered as current repairs, the same is eligible u/s 37(1) of the Income Tax Act as revenue expenditure as the repairs were done to preserve and maintain an already existing asset and to improve its longevity. There was no new assets created by the assessee. Therefore, CIT(A) as well as the Assessing Officer was not right in making disallowance of current repairs out repairs & maintenance of building. Thus, appeal of the assessee is allowed.

9. In result, appeal filed by the assessee is allowed.

**Order pronounced in the Open Court on 06<sup>th</sup> June, 2019.**

Sd/-

**(G. D. AGRAWAL)  
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 06/06/2019

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	28.05.2019
Date on which the typed draft is placed before the dictating Member	28.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date of pronouncement:	06/06/19
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	

