



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **IT A 171/2010**

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, Adv.
versus

SUPER CASSETTES INDUSTRIES LTD. Respondent
Through Mr. Satyen Sethi and Mr. Arta
Trana Panda, Adv.

+ **IT A 197/2010**

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, Adv.
versus

SUPER CASSETTES INDUSTRIES LTD. Respondent
Through Mr. Satyen Sethi and Mr. Arta
Trana Panda, Adv.

+ **IT A 626/2010**

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, Adv.
versus

SUPER CASSETTES INDUSTRIES LTD. Respondent
Through Mr. Satyen Sethi and Mr. Arta
Trana Panda, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

ORDER
% **17.10.2011**

With the consent of the parties these appeals are heard and are
being disposed of by this common order.



2. These appeals under Section 260A of the Income Tax Act, 196 (Act, for short) are directed against the order dated 30th June, 2009 passed by the Income Tax Appellate Tribunal (for short, the tribunal) on the question whether the expenditure incurred on purchase of moulds is capital expenditure or revenue expenditure. The tribunal has accepted the stand of the respondent-assessee that the expenditure incurred by the assessee on the purchase of moulds is revenue expenditure.

3. It may be relevant to reproduce the stand of the assessee before the Assessing Officer, which is elucidated in paragraph 23 of the impugned order:-

“2. The brief facts of the case are that the assessee has debited a sum of Rs.3,78,27,658/- under the head “machinery repair and maintenance in Unit C-5”. This unit was manufacturing plastic components, namely, shell, roller, lock, CD shell box etc. These components are primarily used for assembling of audio cassettes and packing of CDs. The assessee had installed more than 100 injection moulding machines at Unit C-5 which was established in 1988. The injection moulding machines were purchased and installed in phase manner. The last injection moulding machine was imported in financial year 1999-00. According to the assessee, the moulds are integral part of an injection moulding machines and different molds have to be used for making different varieties of plastic components. It was contended that mould an necessary input for making the desired plastic components. These moulds have to be replaced over a period of time due to normal wear and tear. The assessee used to purchase new injection



moulding machine. Moulds purchased alongwith such new machines are capitalized by it alongwith the cost of new injection moulding machine. However, if moulds only are replaced then it claimed the expenses representing the value of replaced mould as revenue expenses.”

4. The Assessing Officer did not controvert or deny the aforesaid factual position projected by the assessee that the moulds in question were integral part of the injection moulding machines and had to be replaced by new moulds due to normal wear and tear. The assessee had purchased injection moulding machines which included the moulds and these were treated as capital assets, but once the moulds were replaced by new moulds, the expenditure incurred on new moulds was treated by the assessee as revenue expenditure. The stand taken by the Assessing Officer/Revenue was that moulds have been classified as a capital asset specifically in the depreciation schedule in the Income Tax Rules, 1962 and the rate of depreciation is specified @ 40% and, therefore, the moulds are capital asset and purchase price of the moulds cannot be treated as revenue expenditure. The reasoning of the Assessing Officer is as under:-

“During the assessment proceedings it was noticed that assessee has debited a sum of Rs.3,78,27,658/- under the head “Machinery Repair & Maintenance” in Unit C-5, Phase-II, Noida, which manufacture plastic components. The details filed by the assessee and on examination of books of accounts it was noticed that the assessee has purchased moulds, the details



of which are given as under and has debited the expenses as revenue expenditure under the head “machinery repair and maintenance”. The assessee company is claiming depreciation on moulds and dies separately but following expenses though incurred for purchase of moulds has been debited as revenue expenditure. The mould used in machinery is a capital assets and is specified in the depreciation chart separately as mentioned in the Income Tax Rules for allowing depreciation. In view of this the expenditure incurred for purchase of mould is treated as capital expenditure and is added in the income of the assessee. However, depreciation as permissible under the law 25% will be allowed.”

5. The reasoning is fallacious; the schedule or rate of depreciation cannot decide whether a particular expenditure in the hands of an assessee is revenue or capital expenditure. Same asset can be stock in trade in the hand of one assessee and a capital asset in hands of another assessee. The schedule does not decide whether an asset purchased is a capital asset. Merely because moulds have been classified and mentioned in the schedule relating to depreciation in the Income Tax Rules, it does not mean that the purchase price of the moulds in all cases has to be treated as a capital expenditure. It would depend upon the facts and circumstances of each case whether the purchase price of moulds is to be capitalized or treated as revenue expenditure. Purchase price of moulds cannot be regarded as a capital expenditure if the replaced mould is an integral part of an existing injection moulding



machine. In such cases a new asset does not come into existence but the expenditure incurred is towards purchase of parts for repair or maintenance of existing machinery. (Difference between repair and maintenance is not relevant and urged in the present appeals). No new or fresh advantage of enduring benefit materializes but the purpose is to preserve and maintain an already existing asset. The expenditure incurred on replacement of the moulds is in the nature of replacement of parts of the old machines which continues to exist and remains the capital asset.

6. The tribunal in the impugned order has rightly relied upon the decision of this Court in *Commissioner of Income-Tax Vs. Jagatjit Industries Ltd.* [2000] 241 ITR 556, wherein it has been held as under:-

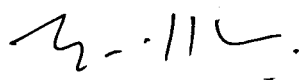
“Whether on given set of facts, replacement of certain items, forming an integral or important part of the machinery would be revenue expenditure or capital expenditure is primarily a question of fact, to be decided in the context of the business carried on by an assessee. Merely, because the benefit accruing by the expenditure is of enduring nature, is by itself not a conclusive test to hold it as a capital expenditure (see *Empire Jute Co. Ltd. v. CIT* [1980] 124 ITR 1 (SC)). Normally initial investment on machines and their parts will be in the nature of capital expenditure but replacement of parts of an existing machinery in the course of their working will be a revenue expenditure.

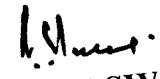
In the instant case having regard to the nature of the business of the assessee and applying the principle of law enunciated in *Mysore Spun*



Concrete Pipe Pvt. Ltd.'s case [1992] 194 ITR 159 (Kar), the Tribunal has reached a conclusion that the moulds in question do not enhance the capacity of the existing machines and are merely replacements for the moulds damaged during the process of manufacture of glass. It is also evident from the format of the question proposed by the Revenue, that finding of the Tribunal to the effect that the expenditure in question was incurred by the assessee on the "replacement" of the moulds is not under challenge."

7. In view of the findings recorded by the tribunal, we do not think that any question of law arises for consideration and the appeals are accordingly dismissed without any order as to costs.


SANJIV KHANNA, J.


R.V. EASWAR, J.

OCTOBER 17, 2011
NA /