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

+ **INCOME TAX APPEAL No. 330/2013**

Date of decision: 2nd September, 2013

COMMISSIONER OF INCOME TAX XI

..... Appellant

Through Mr. Abhishek Maratha, Sr. Standing
Counsel & Ms. Anshul Sharma, Advocate.

Versus

GOKUL CHAND HARI CHAND

..... Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

CM No. 10753/2013 & ITA No. 330/2013

This is an application for condonation of delay of 70 days in refiling of the appeal. The Registry has stated that the delay is about 285 days.

2. Before issuing notice on the application for condonation of delay, we have deemed it appropriate to examine the appeal on merits and examine whether the impugned order on merits requires interference. It was pointed out to the counsel for the appellant that the



assessment order was cryptic and does not deal with and refer adverse facts. Learned counsel for the appellant accepts the position but submits that an order of remand should be passed for fresh enquiry/assessment by the Assessing Officer. We are not inclined to accept the said prayer, as the Assessing Officer should have taken due care and caution while passing the assessment order itself. The appellate authorities have examined the facts and accepted the factual position asserted by the respondent assessee. There is no ground or reason to not accept the said factual findings recorded in the appellate proceedings.

3. The assessee operated a stone crusher at Faridabad. They had debited Rs.44,76,290/- towards machinery maintenance. The Assessing Officer rejected the said expenditure after noticing and recording:-

“The explanation of the AR of the assessee has duly been considered but the same has been found not acceptable. The AR of the assessee in his reply dated 9/11/2010 has stated that “it will not be out of place to mention that about 99% maintenance expenses relate to replacement of worn out/broken parts.” However, as per subsequent details of machinery maintenance expenses filed by the AR of the assessee on 15/12/2010, expenses of Rs.3,81,273/- pertain to purchase of jaw plates, generator running and some electrical repairing wrongly included in machinery maintenance and the remaining expenses amounting to Rs.40,95,017/- relates to purchase of items for



replacement of parts of the machineries. From the reply of the AR, it is evident that by incurring such expenses, the machineries used by the assessee were converted into new ones and increased into new ones and increased their durability also. The language of the Act is very clear when it speaks that expenses relating to current repairs but falling in the nature of capital expenditure shall not be allowed to the assessee for deduction.....?”

4. There is no other discussion in the assessment order with reference to the factual matrix. The Assessing Officer did not consider the break-up of the expenses and what was the nature and character of the “maintenance expenses” as claimed.

5. The first appellate authority and the tribunal have deliberated on the said question and have recorded the following findings:-

- (i) The machinery in question was old and was purchased by the assessee in the year 1999-00. The written down value of the machinery at the time of purchase was Rs.4,76,569/-. The assessment year in question is 2008-09. Old machinery required repairs to keep it operational and in working condition.
- (ii) Nature and character of the expenses was examined after perusal of item-wise details of repair. It was found that the repairs were in respect of brackets, bearing, belts, chain, loader, electrical motor rewinding, face plates, gas cutter pipe nuts and bolts, washers, champs, PVC pipes, pulley, MS plates, wire mesh,



welding rods, wooden gutka, ruli, shafts, lever pin etc.

- (iii) It has been held that the repairs were towards replacement of parts of machines and no new machine was purchased.
- (iv) Reference was made to the maintenance expenditure for earlier years and that stone crushers require heavy maintenance and generally the full benefit of maintenance was consumed within a short period.

6. The tribunal and the CIT(Appeals) have also referred to the quantum of expenses with reference to the total sales turnover, which are as under:

| Asstt. Year | Amount of expenses (in Rs.) | Sales |
|-------------|--------------------------------|----------------|
| 2006-07 | 24,86,057.00 | 2,90,99,633.00 |
| 2007-08 | 42,41,219.00 | 3,98,51,062.00 |
| 2008-09 | 44,76,290.00 | 4,06,23,623.00 |

7. We are not inclined to accept the prayer for remand as it was the duty or responsibility of the Assessing Officers to deal with the contention and facts stated by the assessee. The factual matrix as discussed by the appellate authorities is not controverted and denied by the appellant by filing requisite material. Even now the details of the maintenance expenses have not been placed on record before us to question the factual findings. The appeal is devoid of merits.



Accordingly, we do not see any reason to issue notice on t
application for condonation of delay and the application as a sequitur
the appeal is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

SEPTEMBER 02, 2013
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