

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-III), 'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAM LAL NEGI, JM

**ITA No.6325/Mum/2010
(Assessment Year :1990-1991)**

**ITA No.6324/Mum/2010
(Assessment Year :1991-1992)**

**ITA No.6963/Mum/2014
(Assessment Year :1993-1994)**

&

**ITA No.6964/Mum/2014
(Assessment Year :1994-1995)**

Assistant Commissioner of Income Tax(LTU-1), Mumbai 29 th Floor, Centre-I, World Trade Center, Cuffe Parade Mumbai – 400 005	Vs.	M/s. Bajaj Holdings & Investment Ltd (Formerly known as M/s. Bajaj Auto Ltd.,) 226, Bajaj Bhavan, 2 nd Floor Jamnalal Bajaj Marg, Nariman Point Mumbai – 400 021
PAN/GIR No. AAACB3370K		
(Appellant)	..	(Respondent)

Revenue by	Shri Rahul Raman- CIT DR
Assessee by	Shri Percy Pardiwala, Senior Advocate
Date of Hearing	24/08/2020
Date of Pronouncement	28/08/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.6324/Mum/2010, 6325/Mum/2010, 6963/Mum/2014 & 6964/Mum/2014 for A.Y.1990-91, 1991-92, 1993-94 & 1994-95 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in Appeal Nos. CIT(A)-24/LTU/DCSR.43/27/93-94, CIT(A)-24/LTU/DCSR.43/36/94-95, CIT(A)-LTU/Set-aside/2/2014-15 & CIT(A)-LTU/Set-aside/1/2014-15 respectively dated 25/06/2010 & 27/08/2014 respectively (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) and 143(3) set-aside by the ITAT u/s.254 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10/03/1993, 23/03/1994 & 27/12/1995 respectively by the Id. Dy. Commissioner of Income Tax, Special Range-43, Mumbai & Id. Dy. Commissioner of Income Tax, Special Range-34, Mumbai respectively (hereinafter referred to as Id. AO).

2. As identical issues are involved in all these appeals, they are taken up and disposed off by this common order for the sake of convenience. With the consent of both the parties, the appeal of the revenue for the A.Y.1990-1991 is taken up as the lead case for adjudication and the decision rendered thereon would apply with equal force for other assessment years also in respect of identical issues except with variance in figures.

3. The first identical issue to be decided in the appeal of the revenue for the A.Y.1990-91 is as to whether the Id. CIT(A) was justified in

treating the expenditure on replacement of Jigs and fixtures as revenue expenditure in the facts and circumstances of the case.

3.1. We have heard rival submissions and perused the materials available on record. We find that the assessee company had incurred expenditure on jigs and fixtures amounting to Rs.1,06,11,064/- including capital work in progress amounting to Rs.11,18,955/- during the Financial Year 1989-90 relevant to A.Y.1990-91. Assessee submitted that these are nothing but replacement of jigs and fixtures in the main plant and machinery and would be eligible for deduction as revenue expenditure. During the course of assessment proceedings, the assessee requested the Id. AO to allow the sum of Rs.94,92,103/- as deduction in A.Y.1990-91 and the balance sum of Rs.11,18,955/- in A.Y.1991-92 since the said amount was lying in capital work in progress and the same was not put to use during the A.Y.1990-91. We find that the Id. AO observed that the expenditure incurred on replacement of jigs and fixtures would be capital expenditure and accordingly, granted depreciation thereon. It is not in dispute that assessee had indeed capitalised the replacement cost of jigs and fixtures in its books and had claimed depreciation as per Companies Act in its books. However, for the purpose of Income Tax, the assessee had claimed the said expenditure as the revenue expenditure on the ground that the said expenditure would fall under the category of "current repairs". We find that the present state of appellate proceedings is the second round of proceedings, since in the first round, this Tribunal had restored this issue to the file of the Id. CIT(A) for adjudication in the light of various judicial decisions relied upon by the assessee. We find that the expenditure incurred on replacement of jigs and fixtures are basically tooling aids required in the production process and these items are part of the machinery in automobile industry. We find that these jigs and

fixtures need to be constantly replaced due to constant wear and tear and also due to changes in the design of the part. It is not in dispute that the expenditure incurred on jigs and fixtures at the time of first purchase together with the main plant and machinery was duly capitalised by the assessee at the time of first purchase for the purpose of Income Tax Act and depreciation claimed accordingly for the purpose of Income Tax Act. Later, whenever the said jigs and fixtures were replaced for the reasons stated supra, the assessee has been claiming the same as revenue expenditure for the purpose of Income Tax Act. We find that this argument was duly appreciated by the Id. CIT(A) and the Id. CIT(A) duly granted relief to the assessee in this regard by following the decision of his predecessor in assessee's own case for the A.Yrs 2002-03, 2005-06 and 2006-07.

3.2. We find that the issue in dispute is squarely covered in favour of the assessee of Hon'ble Madras High Court in the case of CIT vs. TVS Motors Ltd., reported in 417 ITR 236. The relevant question before the Hon'ble High Court is as under:-

“Whether on the facts and circumstances of the case, the Tribunal was right in holding expenditure on replacement of dies and moulds are to be allowed as current repairs?”

3.3. We find that this issue had been decided in favour of the assessee by the Hon'ble Madras High Court by holding as under:-

“4.The revenue does not dispute the fact that in the assessee's own case for the assessment year 2003-04, three substantial questions of law raised in this appeal were considered and they were decided against the revenue and in favour of the assessee in the decision reported in [2014] 364 ITR 0001 ([Mad](#)) [[Commissioner of Income vs. TVS Motors Limited](#)]. The Substantial Questions

of law 1 to 3 herein were identical to that of the Substantial Questions of law 3 to 5 in the said appeal for the assessment year 2003-04.

The Substantial Questions of law were answered against the revenue on the following terms:

"28. As regards the expenditure on Research & Development, after analysing the facts, the Tribunal rightly applied the decision reported in 255 ITR 395 in the case of CIT Vs. Rane Brake Linings Ltd. Consequently, we have no hesitation in rejecting the Revenue's plea.

29. As regards the expenditure on dies & moulds, the assessee pointed out that it debited an amount of Rs.11,17,68,169/- towards dies and moulds only to replace them in the place of worn out dies and moulds. The <http://www.judis.nic.in> assessee in the memorandum of income added this amount to the total income and claimed the cost of dies and moulds of Rs.22,66,52,504/- under [Section 31](#) of the Act. The assessee stated that within a period of one year of installation, the life of the dies and moulds would become obsolete and this was due to high production involved. Thus, replacement of the new dye in the place of old dye would qualify for current repairs under [Section 31](#) of the Act. The Assessing Officer, however, rejected the contention of the assessee and the Assessing Officer pointed out that the assessee was claiming depreciation upto 1999-2000 under [Section 32](#) of the Act and only in the year under consideration, it started claiming deduction under [Section 31](#) of the Act. The Tribunal pointed out that the dies and moulds were not plant and machinery, yet the replacement of dies and moulds were not in the nature of installation of machinery in the factory. Such moulds and dies were normally attached to the machines to suit the individual requirement of particular product. So holding, the Tribunal held that expenditure incurred on replacement of dies and moulds was revenue in nature. It relied on the decision of Karnataka High Court in the case of Mysore Spun Concrete Pipe Pvt. Ltd, reported in 194 ITR 159.

30. As far as this issue is concerned, learned counsel appearing for the assessee placed reliance on the decision of this Court reported in (2013) 357 ITR 720 (Mad) in the case of Super Spinning Mills Ltd., Vs. Assistant Commissioner of Income-tax related to the expenditure on replacement of the machinery parts. The assessee therein engaged in the business of manufacture and trading in cotton yarn and allied products and the assessee incurred expenditure in respect of replacement of certain textile machinery. On a question as to whether such replacement of parts would be current repairs of capital in nature, this Court considered the decisions in the case of CIT Vs. Saravana Spinning Mills P; Ltd., reported in (2007) 293 ITR 201 (SC), CIT Vs. Ramaraju Surgical Cotton Mills reported in (2007) 294 ITR 328 (SC) and CIT Vs. Mangayarkarasi Mills P.Ltd., reported in (2009) 315 ITR 114 (SC) and pointed out that the question as to whether the expenditure incurred on replacement of machinery is revenue or capital rests on the nature of capital incurred vis-a-vis the benefit derived. This

Court referred to the decision in the case of CIT Vs. Saravana Spinning Mills P.Ltd., reported in (2007) 293 ITR 201 (SC) and in particular to the decision in the case of CIT Vs. Sri Mangayarkarasi Mills P.Ltd., reported in (2009) 315 ITR 114 (SC)

31. Applying the ratio of the decision cited above, when we look into the facts of the above cases, it is evident that with regard to the moulds and dies attached to the machinery like press designs specification, moulds and dies are not independent of the plant and machinery, but are parts of the machinery. Once the dies are worn out, the machines cannot turn out the product to the business specifications and this has to be obtained only on a replacement of the dies and moulds, a fact which is not refuted by the revenue. It is no doubt true that the assessee claimed depreciation on dies and moulds. Yet in the decision in the case of CIT Vs. Mahalakshmi Textile Mills Ltd., reported in (1967) 66 ITR 710 (SC), the Apex Court pointed out that all questions whether of law or of fact, which relate to the assessment year of the assessee could be raised in any year under consideration before the Officer as well as before the Income Tax Appellate Tribunal too and if, for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, the grant of relief to an assessee is justified on another ground, the Revenue is bound to consider such claim of granting the relief. The Apex Court pointed out that the right of the assessee to the relief is not restricted to the plea raised by him. On the facts before us, when the dies and moulds were attached to the machine to manufacture the designed product, we have no hesitation to accept the plea of the assessee that the claim would fall for consideration only under [Section 31](#) of the Act.

32. In the unreported decision of this Court dated 27.04.2012 in Tax Case (Appeal).No.1011 of 2005 (The Commissioner of Income Tax, Madurai Vs. M/s.Machado Sons) on the question of repair made to a ship, this Court pointed out that when the object of the expenditure was not for bringing into existence a new asset or to obtain a new advantage, the said expenditure qualifies to be considered as current repairs under [Section 31](#) of the Act. In so holding, after referring to the decision of the Apex Court in the case of CIT Vs. M/s.Saravana Spinning Mills P.Ltd., reported in (2007) 293 ITR 201, this Court further pointed out to the decision of the Apex Court where it cautioned that all repairs are not current repairs on [Section 31\(1\)](#) of the Act; [Section 31\(1\)](#) of the Act limits the scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to the concept of "current repairs". Thus, this Court pointed out that what is allowable as revenue expenditure under [Section 37](#) of the Act are those expenditure other than one falling for consideration under [Sections 30](#) to [36](#) of the Act. The Apex Court further pointed out the example that when the picture tube in a television set is replaced, such repairs would come within the connotation of the phrase "current repairs". Thus, applying these two decisions, we have no hesitation in rejecting the Revenue's appeal. We hold that the claim being considered as current

repairs, the same would fall under [Section 31](#) of the Act as current repairs. To that extent, we modify the order of the Tribunal.

33. On the question of deduction under Entry Tax, the Tribunal rightly considered the claim of the assessee for deduction of entry tax payment made by the assessee. The Assessing Officer admitted that the deduction on account of Entry Tax is allowable if the payment is actually made and admittedly, payment of entry tax has been made by the assessee; the entry tax paid would get the adjustment as against the Sales Tax liability, consequently, any deduction would amount to total deduction."

5.Thus, following the above decision in the assessee's own case, the appeal filed by the revenue is dismissed and the Substantial Questions of law were answered in favour of the respondent/assessee. No costs."

3.4. We also find that similar view has been taken by the Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. reported in 89 Taxmann.com 191. Respectfully following the aforesaid decisions, we hold that the order passed by the Id. CIT(A) granting relief to the assessee by allowing deduction towards expenditure incurred on replacement of jigs and fixtures does not require any interference. Accordingly, the ground No.1 raised by the revenue for A.Y.1990-91 is dismissed.

4. The last issue to be decided in the appeal of the revenue for A.Y.1990-91 is as to whether the Id. CIT(A) was justified in treating certain receipts as not forming part of the total turnover while computing deduction u/s.80HHC of the Act.

4.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO in page 4 para 3 of his assessment order dated 10/03/1993 had observed that the assessee had derived the following other income:-

a) Dividends

Rs. 27,96,695/-

b) Income from Units	Rs.749,17,044/-
c) Interests	Rs.308,95,599/-
d) Profit on sale of investments	<u>Rs. 81,16,500/-</u>
	Rs.11,67,25,838/-
	=====

4.2. We find that assessee had pleaded the aforesaid receipts cannot be treated as forming part of turnover and from the very nature of the aforesaid receipts, it could be seen that it has got no link with the export activities of the assessee. Accordingly, the assessee claimed deduction u/s.80 HHC of the Act by not including the aforesaid four receipts as forming part of total turnover. The Id. AO however, did not agree to the contentions of the assessee and included the aforesaid receipts as forming part of total turnover and reduced the claim of deduction u/s.80HHC of the Act in the assessment. We find that the Id. CIT(A) had agreed with the contentions of the assessee and granted relief to the assessee in this regard. The Id. DR placed reliance on the order of the Id. AO.

4.3. We find that from the very nature of the aforesaid four receipts, it could be seen that these receipts are merely income from other sources and not business income of the assessee and hence, cannot form part of profits and gains of business of the assessee. We also find that the aforesaid four receipts do not have any link in any manner whatsoever with the export activities of the assessee. We find that the deduction u/s.80HHC of the Act is given in respect of export sale proceeds that were brought into India in convertible foreign exchange and the profit derived attributable thereon alone would be eligible for deduction u/s.80HHC of the Act. We also find that the CBDT vide its Circular in Para 32.10

explaining the amendments to the Finance (No.2) Act, 1991 had categorically clarified that the receipts like interest, commission etc., do not have any element of turnover. Accordingly, the amendment was made to remove the said items from the profits of the business w.e.f. 01/04/1992 pertaining to A.Y.1992-93 onwards. Hence, the intention of the legislature is very clear and it is without any ambiguity and it could be safely concluded that the aforesaid four receipts do not form part of total turnover. We also find that the Id. CIT(A) had placed reliance on the decision of the Hon'ble Jurisdictional High Court to support its contention in the case of Kantilal Chhotalal vs. DCIT reported in 246 ITR 439 (Bom) wherein it was held as under:-

“The Legislature have clarified that receipts like interest, commission, etc., have no nexus with the export activity and by including such receipts in the business profits the existing formula became unworkable”

4.4. In our considered opinion, this decision is squarely applicable to the assessee for the A.Y.1990-91. In view of our aforesaid observations and the decision of jurisdictional High Court referred to supra, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee. Accordingly, the ground No.2 raised by the revenue for A.Y.1990-91 is dismissed.

5. The other grounds raised by the assessee for the A.Y.1990-91 are general in nature and does not require any specific jurisdiction.

5.1. We find that for the A.Yrs.1991-92, 1993-94 & 1994-95, the only ground raised by the revenue is with regard to the direction of the Id. CIT(A) in allowing the revenue expenditure in respect of replacement of jigs and fixtures and dies and moulds. The decision rendered by us in

ground No.1 for A.Y.1990-91 would hold good for the same. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, all the appeals filed by the revenue are dismissed.

Order pronounced on 28/08/2020 by way of proper mentioning in the notice board.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/08/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

