आयकर अपीलीय अधिकरण, ''सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' C' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं

श्री धुव्वुरु आर.एल रेड्डी न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

AND Shri Duvvuru RL Reddy, JUDICIAL MEMBER

आयकर अपील सं./**I.T.A.Nos.797 & 798/Mds./2016**

निर्धारण वर्ष /Assessment years : 2008-09 & 2009-10

M/s.Ucal Machine Tools (P) Ltd., (now merged with M/s.Ucal Fuel Systems Ltd.) Raheja Towers,7th Floor, Sigma Wing, No.177,Anna Salai, Chennai 600 002. **[PAN** AAACU 0826 D **]**	**Vs.**	Income Tax Officer, Company Ward-III(1), Chennai-34.
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.T.N.Seetharaman,Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.A.V.Sreekanth,JCIT,DR
सुनवाई की तारीख/Date of Hearing	:	09-06-2016
घोषणा की तारीख /Date of Pronouncement	:	15-07-2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These two appeals filed by the assessee are directed against the common order of the Commissioner of Income-tax (Appeals)-11 dated 22.01.2016 pertaining to the assessment years 2008-09 & 2009-10.

2. The first ground in ITA No.797/Mds./16 is with regard to reopening of assessment u/s.147 of the Act.

3. The facts of the issue are that the assessee company is engaged in manufacture of automobile component and also making dyes & moulds, jigs and fixtures and special purpose tools as per customer's requirements. The assessee filed e-return for assessment year 2008-09 on 29.09.2008 admitting an income of ₹1,12,41,631/- and the assessment u/s.143(3) was completed on 27.12.2010 accepting the income returned. Subsequently, the AO found that under the head 'Manufacturing and other expenses' an amount of ₹67,39,084/- was included as expenditure on replacement of tools which requires to be disallowed and capitalized. Therefore,, the assessment was re-opened by issue of notice u/s.148 on 10.04.2012. Finally, the AO completed the assessment u/s.143(3) r.w.s.147 of the Act on 07.03.2014. Aggrieved, the assessee carried the appeal before the CIT(A). On appeal, the CIT(A) observed that the scrutiny assessment was re-opened within 4 years from the end of the assessment year. Just because an assessment was completed u/s.143(3), it does not mean the AO has considered all the issues and the relevant provisions of the Act. Ld.CIT(A) citing various judicial decisions in support of his decision, upheld the re-opening of

assessment u/s.147 of the Act. Against this, the assessee is in appeal before us.

4. Before us, the ld.A.R submitted that at the time of original assessment, the AO called for various details by issuing notice u/s.143(2) of the Act and after duly collected requisite information, AO passed assessment order. After passing the assessment order, till issue of notice u/s.148 of the Act nothing new or tangible material was found by the AO. According to him, it is only fresh application of mind on same set of facts and just it is the change of opinion only. For this purpose, ld.A.R relied on the judgment of Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. reported in [2010] 320 ITR 561 (SC). According to him, the reopening of assessment is bad in law. On the other hand, ld.D.R relied on the order of Ld.CIT(A).

5. We have heard both the parties and perused the material on record. The reopening of assessment notice was given to the assessee within four years from the end of the relevant assessment year and in view of the Explanation-1 to sec.147 of the Act, the AO is justified in issuing the notice u/s.148 of the Act for the purpose of re-assessment. After First April, 1989, the AO has power to reopen the assessment u/s.147 of the Act provided AO has a reason to believe that income has escaped assessment and there is tangible material to come to the conclusion that there is an escapement of income; "mere change of

opinion" cannot be a reason for reopening the concluded assessment. The issue was taken by the Supreme Court in the case of CIT Vs. Kelvinator of India Ltd.(supra), which is relating to the assessment year 1987-88. However, after amendment to Sec.147 with effect from 01.04.1989 where an income liable to be taxed as escaped assessment in the original assessment due to oversight and inadvertence or a mistake committed by the ITO, the AO has jurisdiction to re-open the assessment. The Explanation-1 below the proviso to 147 which reads as follows:-

> *Explanation 1.— Production before the Assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

Explanation-1 to Sec.147 of the Act gives power to the AO to re-open the assessment In our opinion, for reopening of assessment , it is not necessary that information must be derived from external source of any kind or that there must be a disclosure of new and important matters subsequent to re-opening of assessment. The re-assessment is permissible even if the information is obtained from proper investigation from the materials and records or from any enquiry or research into the facts or law. The tax payer cannot be allowed to take advantage of any lapse on the part of the AO. In the instant case, admittedly assessment is reopened within four years and the

assessment was reopened for considering the disallowance expenditure of tools. As such, we cannot say that there is a change of opinion, since there is no opinion formed by the AO in the re-opening of assessment on this issue. Accordingly, we upheld the reopening of assessment made by the AO. This ground raised by the assessee for assessment year 2008-09 stands rejected.

6. Coming to the second common ground in both the appeals is with regard to treatment of expenditure on tools as capital expenditure. According to ld.A.R, the life of the tools is very short like screw drivers, spanners which are purchased along with machineries. These items by wear and tear, gets worn out and have to be replaced and such replacement are revenue expenditure only and cannot be considered as capital expenditure. Ld.A.R placed reliance on the following judgments.

1. In the case of CIT Vs. Manohar Lal Hira Lal Ltd. reported in [2013] 39 Taxmann.com 110 (Allahabad)
2. In the case of CIT Vs. TVS Motors Ltd. reported in [2014] 45 Taxmann.com 94(Madras)

7. On the other hand, ld.D.R submitted that there were purchase of drills, milling tools, milling cutter, hydraulic turning fixture for fitting, casting, micor-bore cartridge, lathe fixture, hydraulic turning fixture, stepped drill, milling inserts, vertical swing, clamp cylinder, SC hole mil,

milling, threading and turning inserts, milling tools & inserts etc. From the description, these are clearly tools utilized for plant & machinery and having enduring benefit. Therefore, ld.D.R reiterated that these items cannot be regarded as consumables to be qualified as revenue expenditure allowable u/s.37 of the Act. ld.D.R relied on the case law of Hon'ble Supreme Court in the case of CIT Vs. Saravana Spinning Mills Pv. Ltd., reported in 293 ITR 201. Further, ld.D.R submitted that the case laws submitted by the assessee's counsel cannot be applicable to the facts of the case.

8. We have heard both the parties and perused the material on record. It is clear upon reading the provisions of Accounting Standards (AS) 2 and (AS) 10 that, the opinion of the Council of the Institute of Chartered Accountants of India in respect of treatment of machinery spares is briefly that machinery spares which are not specific to any fixed asset and can be used generally should be treated as part of inventory and charged to profit and loss account as and when they are consumed during the ordinary course of business. On the other hand, if the machinery spares are of the nature of capital spares/insurance spares which are specific to a particular item of fixed asset and their use is irregular, then, they should be capitalized separately and depreciated on a systematic basis over a time frame not exceeding the useful life of the fixed asset to which they relate. As a matter of fact, in case the fixed asset to which they relate, is discarded, the machinery spares will also have to be disposed of as these spares are

integral parts of the fixed asset. It is to be noted that these Accounting Standards are mandatory in nature and applied to accounts prepared after April 1, 1999. In that sense the submission of the assessee has to be accepted that the change in the accounting policy had been brought about by virtue of the issuance of the revised accounting standards issued by the Council of the Institute of Chartered Accountants of India, which were, applicable for the assessment year under consideration. Furthermore, the provisions of sub-sections (3A), (3B) and (3C) of section 211 of the Companies Act, 1956, clearly provide that every profit and loss account and balance-sheet of a company shall comply with the Accounting Standards prescribed. Where the accounts of the company do not comply with the Accounting Standards it is required to disclose in the profit and loss account and the balance-sheet : (a) the deviation from the Accounting Standards ; (b) the reasons for such deviation ; and (c) the financial effect, if any, arising, due to such deviation. What is important is that sub-section (3) of section 211 provides that until the Central Government prescribes an accounting standard in consultation with the National Advisory Committee as set up under section 210A of the Companies Act, 1956, pursuant to a recommendation of the Institute of Chartered Accountants of India the Accounting Standard issued by the Institute of Chartered Accountants of India shall prevail. Therefore, we have no difficulty in accepting the submissions of learned counsel for the assessee that it was obliged to capitalise the entire cost of spares in consonance with the mandatory provisions of Accounting Standards (AS) 2 and (AS) 10. The assessee has

been maintaining a mercantile system of accounting, therefore, the treatment of emergency spares in accordance with the revised Accounting Standard (AS) 2 and (AS) 10 would be in consonance with the mercantile system of accounting which under the Act the Revenue is required to look at for computing income of the assessee chargeable under the head " Profits and gains" from business. The submission of ld.D.R that the accounting treatment to be meted out to a transaction in accordance with the Accounting Standard has no relevance for the purposes of the Income-tax Act, 1961, is a submission which does not commend to us. Thus, expenditure on tools is to be allowed as revenue expenditure and this ground of the appeal is allowed.

9. In the result, the appeal of the assessee in ITA No. 797/Mds./2016 is partly allowed and the appeal of assessee in ITA No. 798/Mds./2016 is allowed.

Order pronounced on 15th July, 2016, at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(**DUVVURU RL REDDY**))
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai
दिनांक/Dated: 15th July, 2016
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF