

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 163/Del/2012
Assessment Year: 2007-08

M/s. Ripe Component Technologies Pvt. Ltd., B-8/14, First Floor, Vasant Vihar, New Delhi	Vs.	Asstt. Commissioner of Income Tax, Circle- 15(1), C.R. Building, I.P. Estate, New Delhi
PAN : AADCR2107F		
(Appellant)		(Respondent)

Appellant by	Sh. S.K. Chaturvedi, CA
Respondent by	Sh. F.R. Meena, Sr.DR

Date of hearing	23.08.2016
Date of pronouncement	21.10.2016

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 19/07/2011 passed by the learned Commissioner of Income-tax (Appeals)-XVIII, New Delhi for assessment year 2007-08 raising following grounds:

1. *The learned Assessing Officer erred on facts in law in making an addition of Rs.31,97,677/- on account of Depreciation claimed on temporary erections and allowing only Rs.3,19,767/- as depreciation.*

2. *The appellant seeks permission to modify and/or add any other ground/grounds of appeal as the circumstances might require or justify before or at the time of hearing."*

2. The facts in brief of the case are that the assessee company was engaged in the business of manufacturing of mobile components and accessories and related activities. For the year under consideration, the assessee filed return of income declaring loss of Rs.5,95,36,759/- on 13/10/2007. The case was selected for scrutiny under Computer Assisted Selection of Scrutiny (CASS) and statutory notice was issued and complied with. In the scrutiny proceedings, the Assessing Officer made certain additions including the disallowance of depreciation claimed of Rs.31,97,677/- on temporary structure at the rate of 100% by the assessee. The learned Assessing Officer, however, allowed depreciation at the rate of 10% on the expenses of Rs.31,97,677/- amounting to Rs.3,19,767/-. The learned Commissioner of Income-tax (Appeals) also sustained the disallowance of 100% depreciation and allowed 10% depreciation on the expenses claimed by the assessee as in the nature of temporary erections. Aggrieved with the finding of the learned Commissioner of Income Tax (Appeals) on the issue of depreciation on temporary structure, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. In the ground No. 1, the assessee has challenged the upholding of disallowance of depreciation claimed at the rate of 100% on structure claimed to be temporary in nature.

4. The learned Authorized Representative of the assessee submitted that, the assessee took factory premises located at IMT, Manesar, Gurgaon, Haryana on lease for an initial period of 60 months from 01/03/2006 (one month prior to the beginning of the year under consideration) from Mr. Sanjay Sodhi and Mr. Salil Sodhi and in the said leased premises, the assessee constructed wooden partitions in offices and factory area, fall ceiling, electrical fittings etc. amounting to Rs.34,42,549.49/-. He further submitted that structure erected in the

factory premises was on a purely temporary basis and once broken, was having no commercial value. The learned Authorized Representative referred to the list of all such expenses incurred, which is available at page 21 of the paper book submitted by the assessee. He submitted that temporary erection was required to be erected at the premises necessarily for carrying out the assessee's business activity. The learned Authorized Representative referred to the lease agreement, a copy of which is available on pages 1 to 20 of the paper book and submitted that the assessee had no right on the factory premises, where such construction was carried out and on termination of the lease, the assessee was required to hand over the vacant possession of the demised premises to the lessor. He also referred to the copy of various bills of expenses available in the assessee's paper book from pages 22 to page 43. In view of above, the learned Authorized Representative submitted that it would be unjustified, if the depreciation on purely temporary reaction was disallowed. In support of the contention of the learned Authorized Representative relied on following decisions:

- i. *Commissioner of Income Tax Vs. Industrial Cables (India) Ltd.*, 254 ITR 267 (P&H)
- ii. *ACIT Vs. Nippo Batteries Co. Ltd.*, ITA No. 1139/1140/Mds/2010
- iii. *CIT Vs. Amrutanjan Finance Ltd. (2011) 15 Taxmann.com 392 (Mad.)*
- iv. *Peri (India) (P.) Ltd. Vs. Joint Commissioner of Income Tax (OSD)*, [2016] 159 ITD 541/71 taxmann.com 79 (Mumbai-Trib.)

5. On the other hand, the learned Sr. Departmental Representative relied on the orders of the authorities below and submitted that the construction carried out was in the nature of improvement of leasehold premises after taking on lease and was for enduring benefits and not in the nature of repairs or renovation of the leased premises and thus the case laws referred by the learned Authorized Representative were not applicable over the facts of the assessee.

6. We have heard the rival submissions and perused the relevant material on record. We find from the para .B of terms of lease agreement, which is available on page 1 to 20 of the assessee's paper book that the assessee, has taken factory premises on lease for a initial period of five years from 01/03/2006. The relevant financial year in the case of the assessee started from 01/04/2006, therefore, the premises have been taken on lease, one month prior to the beginning of the relevant financial year. In the year under consideration, the assessee carried out various works, which have been claimed by the assessee of temporary nature. On perusal of page- 21 of the assessee's paper book, we find that the assessee carried out work from following parties:

Details of Temporary Shed From 01.04.2006 to 21.03.2007

Sl. No.	Date of Entry	Name of Party	Date	Amount
1	20/06/2006	Design Studio	02/06/2006	78,297.00
2	01/07/2006	Aluminium Craft	29/06/2006	7,772.50
3	06/07/2006	Abhishek Engineers	02/07/2006	23,596.00
4	31/07/2006	Design Studio	27/07/2006	136,748.00
5	31/07/2006	Design Studio	23/06/2006	31,470.00
6	17/08/2006	BaseLine	04/05/2006	223,425.00
7	17/08/2006	Baseline		1,652,682.00
8	25/08/2006	Deepak Floorings	23/08/2006	50,625.00
9	28/08/2006	Deepak Floorings	24/08/2006	22,230.00
10	02/09/2006	Mukta Industries	01/09/2006	56,999.00
11	12/09/2006	Aluminium Craft & Steel Fab	09/09/2006	97,328.00
12	19/09/2006	Deepak Floorings	14/09/2006	133,583.00
13	20/09/2006	Deepak Floorings		14,062.00
14	20/09/2006	Azim Khan Contractor	04/09/2006	229,106.00
15	22/09/2006	Design Studio	09/09/2006	102,017.00
16	29/09/2006	Aluminium Craft & Steel Fab		92,863.47
17	04/10/2006	Aluminium Craft & Steel Fab	28/09/2006	11,076.00
18	17/10/2006	MBG Industrial Corporation	17/10/2006	20,000.00
19	01/11/2006	Design Studio	31/10/2006	89,161.00
20	03/02/2007	Floor Tech Co.	01/02/2007	49,920.00
21	03/02/2007	Floor Tech Co.	01/02/2007	3,661.00
22	28/02/2007	Floor Tech Co.	27/02/2007	106,223.52
23	01/03/2007	Design Studio	24/02/2007	101,292.00
24	08/03/2007	Azim Khan	20/02/2007	10,000.00
25	08/03/2007	Azim Khan	26/02/2007	16,400.00
26	12/03/2007	Aluminium Craft & Steel Fab	26/12/2006	49,416.00
27	12/03/2007	Aluminium Craft & Steel Fab	26/12/2006	12,096.00
28	21/03/2007	MBG Industrial Corporation	21/03/2007	20,500.00
				3,442,549.49

7. Further on perusal of the bills available in the paper book, we find that according to the page 22 of the paper book, a bill of Rs.78,297/- has been raised by M/s. Design Studio for carrying out civil construction, flooring etc. Similarly, on page 24, bill of M/s. Design Studio of Rs.1,36,748/- for constructing trenches, transformer foundation, steel structural etc. is available. On page 25, again a copy of the bill of M/s. Design Studio, amounting to Rs.31,470/- for demolition of wall, slab casting, construction of brick wall, plaster etc. has been filed. On page 35, 36 and 37, copy of a bills of M/s. Design Studio of Rs.1,02,011/- is available which contains work in the nature of civil construction like Crane girder fixing, Exhaust Fan fixing, motor foundation for cooling tower, Air washer tank foundation, diesel tank foundation. According to the page No. 40, which is a bill of design studio for work of construction of brickwall, plaster, steel door window etc. carried out. On page 23, a copy of Bill of M/s Abhishek Engineers, amounting to Rs.23,596/- for Gypsum Board Partition with glass wool filled, is available. On page 26 and 27, copies of bills issued by M/s. Baseline, amounting to Rs.2,23,425/- and Rs.19,12,943/- for supply of carpet and providing and fixing false ceiling, partition, display in reception, laminated door, teak wood doors, air conditioners ducting etc. On pages, 28 and 29 copies of bills raised by M/s Deepak Floorings, amounting to Rs.50,625/- and Rs.22,550/- for supply of air curtain and installation material for ceilings respectively have been filed. On page 32 and 33, copies of bills of M/s. Deepak Floorings, amounting to Rs.1,33,583/- and Rs.14,062/- for supply of Diaken mineral fibre ceiling with aluminium grid, installation materials etc. have been filed. On page 30, a copy of Bill of M/s Mukta Industries amounting to Rs.56,999/- for air compression shed has been filed. On page 31 and 38, copies of the bills of M/s. Aluminium Craft and Steel Fab amounting to Rs.97,328/- and Rs.92,863/- for aluminum

partitions, door closers etc. have been filed. According to the pages 41 to 43 of the paper book, M/s. Floor Tech. has raised bills of Rs.49,920/-, Rs.3,661/-, Rs.1,06, 223/- for EPU flooring.

8. It is evident from the bills raised by the different vendors, that the work carried out by the assessee was not in the nature of the repair work or refurbishing or renovation of the old premises, but it was in the nature of addition to the premises, which have been taken on the lease for initial period of five years

9. Further, we find from the para 13.6 of the lease agreement, which is having a condition that on termination or expiry of the agreement the lessee may take away such installation at its own cost, and in case the lessor so desires to retain the same the parties shall negotiate the price, which the lessor shall pay to the Lessee. In view of this condition, also it is apparent that the installations in the nature of aluminium partitions, fall-ceiling, floorings etc were installation in the nature of enduring benefit and cannot be termed as structure in the nature of temporary.

10. In the case of Commissioner of Income Tax Vs. Industrial Cables India Ltd.(supra) the expenses involved were towards temporary quarters for the workers and the Kacha (temporary) road linking the workers quarters with the factory. In the case of M/s. Dredging International India Private Limited (supra) the expenses incurred were related to the temporary housing units at the project site in Hazira, on the land not owned by the assessee company, which were required in connection with execution of the contractual work and not for the other purposes. In the case of M/s Nippo Batteries Company Limited (supra) also following the decision of Mumbai bench of Tribunal in the case of ACIT Vs. M/s. Lintas (I) Ltd (ITA Nos. 1696 & 1601/Mum/06 dated 18-10-2010) it is held that repair and maintenance and renovation expenditure or building, machinery and equipment to keep the asset in good working condition

could not be considered as capital outgo. In the case of Amrutnjan Finance Ltd (Supra), the Honble Madras High Court has held the expenses of temporary wooden structure and partitions for running computer centres is eligible for 100% depreciation, but from the facts of the case it is not clear whether the expenses were in the nature of repairs or first-time installments. In the case of Peri (India) (P) Ltd (supra) also the Tribunal has held the expenses incurred by the assessee as repair expenses rather than leasehold improvements .

11. Whereas, in the facts of the instant case we find that expenses are not in the nature of repair or renovation of the existing premises but same are taken on lease only a month prior to the beginning of the financial year under consideration and, thereafter, the assessee has incurred expenses on construction of brick walls, plasters, aluminium and teak doors. From the bills raised, it is also apparent that expenses have been incurred for foundation of cooling tower, diesel tank etc. which appears to be part of plant and machinery. In view of above facts and circumstances, we find that the decisions cited by the Authorized Representative are not applicable over the facts of the case of the assessee.

12. Further, we find that the provisions of Expl. 1 of s. 32 of IT Act, 1961 specifically provide as under:

‘Explanation 1.—Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building then, the provisions of

this clause shall apply as if the said structure or work is a building owned by the assessee.'

The above Explanation was introduced w.e.f. 1st April, 1988.

13. The renovation made by the assessee company is in the nature of permanent structure by way of Brick Wall partitions, panelling of Aluminium , Flooring etc. which cannot be covered under current repairs as provided in s. 30 of IT Act, 1961. Such work as made by the assessee company, cannot be stated so as to keep the premises as restored to good condition or save it from exhaustion or compensation of loss. The work in the case of assessee, are meant to altogether change the user by way of expanding its capacity substantially and changeover of its look. The expenditure is certainly capital in nature on which depreciation can only be allowed.

14. Further, we find that in a recent case, the Tribunal Delhi Bench in the case of Marubeni-Itochu Steel India Pvt. Ltd. Vs. Deputy Commissioner Of Income Tax in ITA No. 1716/Del/2014, dated 15th February, 2016, has decided the identical issue as under:

"18.1. The only other ground raised in this appeal is against the confirmation of addition of Rs.23,91,810/- towards the expenditure incurred on account of leasehold improvements by treating the same as capital in nature.

18.2. The facts apropos this issue are that the assessee claimed leasehold improvement expenses of Rs.23.90 lac and architect fee of Rs.33.14 lac as revenue. The AO observed that the assessee started its business during this year only and civil and construction work was done on the premises taken on lease. He treated this

work as construction of a permanent structure on leasehold premises. After entertaining objections from the assessee, he made disallowance of Rs.51,34,426/- (Capitalization of two amounts of Rs.23.90 lac and Rs.33.14 lac as reduced by depreciation). The Id. CIT(A) allowed the assessee's claim in respect of payment to architect amounting to Rs.33.14 lac. However, the remaining amount of Rs.23.90 lac was treated as capital in nature. The assessee is aggrieved against the confirmation of addition to this extent, while there is no appeal filed on behalf of the Revenue.

18.3. We have heard the rival submissions and perused the relevant material on record. It is noticed that the assessee took the premises on lease and also started business during the year under consideration. A sum of Rs.23.90 lac was incurred on complete renovation of such premises as it is apparent from the details placed on record. The Hon'ble Supreme Court in Ballimal Naval Kishore vs. CIT 1997 224 ITR 414 (SC) has held that the expenditure incurred by the assessee on total renovation of cinema theatre by installing new machinery, new furniture, new sanitary fitting and new electrical installation besides extensive repair of structure of building, to be capital expenditure and not allowable as current repairs. This judgment indicates that any capital expenditure on total renovation is liable to be considered as capital expenditure. The Hon'ble jurisdictional High Court in Bigjo's India Ltd. vs. CIT (2007) 293 ITR 170 (Del) considered almost a similar situation as is obtaining before us in the present appeal. In that case, the assessee, a licensee of the showroom, erected new counters and built a new lift shaft at a new site. It was held that

such amount was not in the nature of current repairs but a capital expenditure not deductible in full.

18.4. Adverting to the facts of the instant case, we find that the present facts are on all fours with those considered by the Hon'ble High Court in Bigjo's (supra). It is evident from the description of the items on which the above referred expenditure has been incurred that it is a case of renovation of premises immediately after taking it on lease. As such, there can be no question of replacement. We cannot help if the Revenue has accepted the part deletion of disallowance by the Id. CIT(A). Be that as it may we are concerned only with the items of disallowance raked up in the appeal before us and hold that the Id. CIT(A) has taken unimpeachable view in treating the instant amount as capital expenditure.

18.5. At this stage, it is relevant to note that the Tax Laws (Amendment and Miscellaneous Provisions) Act, 1986 inserted Explanation 1 to section 32 w.e.f. 1.4.1988, reading as under : -

"Explanation-1. Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of, or improvement to the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

18.6. A circumspection of the above Explanation reveals that where a business is carried on in a building not owned by the assessee but in respect of which it holds a lease or either occupancy rights, then the expenditure on i. the construction of a structure or ii. doing of any work in or in relation to and by way of renovation or extension of, or improvement to the building, shall be considered as structure or work in the nature of building owned by the assessee for the purpose of depreciation. Spirit and text of Explanation 1 to section 32 is that any capital expenditure by the assessee on a building not owned by him, in which he carries on the business, shall be considered as building owned by him for the purposes of section 32, to the extent of the amounts spent on the construction of structure or doing of any work in or in relation to and by way of renovation or extension or improvement to the building. It therefore, follows that in order to bring any amount within the ambit of Explanation 1 to section 32, it is paramount that the expenditure incurred by the assessee on the premises in the capacity of non-owner should firstly be in the nature of capital expenditure and then it should fall within any or both the clauses as discussed above. If these conditions get satisfied, as is the case under consideration, then the amount incurred for such works falls for consideration under Explanation 1 to section 32. In other words, the amount so incurred would be capitalized entitling the assessee to depreciation as per the eligible rate. In view of the foregoing discussion, we uphold the impugned order on this issue subject to grant of depreciation.”

15. In view of above, we uphold the finding of the learned Commissioner of Income Tax (Appeals) on the issue in dispute and accordingly dismiss the ground No. 1 of the appeal.

16. The ground No. 2 of the appeal being general in nature, we are not required to adjudicate upon the same.

17. In the result, the appeal of the assessee is dismissed.

The decision is pronounced in the open court on 21st October, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 21st October, 2016.
Laptop/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi