

(2009) 09 DEL CK 0289

In the Delhi High Court

Case No : IT Appeal No's. 314 and 545 of 2009

Commissioner of Income Tax

APPELLANT

Vs

OCL Ltd.

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0289

Hon'ble Judges : Valmiki J Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : P.L. Bansal and Ms. Sonia Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

1. Finding of fact has been arrived at by the CIT, which is even upheld by the learned Income Tax Appellate Tribunal that the three counts of expenditure incurred by the assessee were revenue in nature. In respect of these three expenditure, the findings are as under: A) We have considered the facts of the case and submissions before us. We find that the learned CIT(A) had examined the copies of the bills and other correspondence place before her. It was found that in respect of refractories supplied by the assessee, repair expenses were incurred to meet guarantee obligation. Thus, the expenditure was in relation to the stock-in-trade sold by the assessee to meet guaranteed performance. No benefit of enduring nature was obtained by the assessee. No capital asset was acquired by it. And the expenditure was into the capital field. Therefore, we are of the view that the learned CIT(A) was right in deleting this addition.

B) We have considered the facts of the case and rival submission. It is not the case of the AO that the expenditure was incurred for acquiring any new mine. The assessee had already taken on lease certain mines and the expenditure was incurred, for finding out the quality of raw-material, used in the process of manufacture. Since the expenditure was incurred in relation to the raw material, it only goes to enhance the cost of raw-material. The expenditure did not create

any new asset or benefit of enduring nature. Therefore, we concur with the learned CIT(A) that the expenditure was revenue in nature.

C) We have considered the facts of the case and rivals submissions. From the facts narrated in the order of the learned CIT(A), it is clear that the assessee utilized the technical services of the personnel of Loesche GmbH for finer grinding and homogenization of the cement. It was necessary as better quality products had come into the market. The assessee did not acquire any technical know-how regarding better grinding. It was also pointed out by the learned CIT(A) that improvements in the product are required from time to time in a case where there is neither any acquisition of technical know-how nor increase in the quantity of production, the expenditure would be revenue expenditure, as it left the capital field untouched. We do, not find any error in this order, which finds support from the decision of Hon'ble Supreme Court in the case of Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, . Thus, there is no reason for us to interfere with this part of the decision also. Thus, ground Nos. 3, 4 and 5 are also dismissed.

No substantial question of law arises for determination. We accordingly dismiss this appeal. ITA No. 545/2009

2. In this case also, which is for the same assessee, findings in a similar manner are arrived to the fact that the expenditure incurred is as revenue expenditure. This appeal is also dismissed.