

(2009) 09 DEL CK 0015

In the Delhi High Court

Case No : Income Tax A. No. 1399 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Sunbeam Auto Ltd.

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Income Tax Act, 1961 — Section 10(2), 143(3), 147, 148, 26

Citation : (2009) 227 CTR 133 : (2009) 7 ILR Delhi 585 : (2011) 332 ITR 167 : (2010) 189 TAXMAN 436

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

Bench : Division Bench

Advocate : Sanjeev Sabharwal, for the Appellant; M.S. Syali Rani Kiyali, Pritush Jain and Maryam Sharma, for the Respondent

Judgement

A.K. Sikri, J.—This appeal was admitted on the following question of law:

Whether Commissioner of Income Tax correctly assumed jurisdiction u/s 263 in revising the assessment order u/s 143(3) of the Income Tax Act, 1961?

2. In order to appreciate as to under what circumstances, the question of law has arisen for our consideration, it would be necessary to take stock of the facts as they appear on the records of the case.

3. The respondent (hereinafter referred to as "the assessee") IS a company engaged in the business of manufacturing certain auto parts and has been supplying the same to various car manufactures in India. It has filed its return for the Assessment Year 2001-02 declaring an income of Rs. 9,57,53,430/-. The return was taken up for scrutiny and ultimately assessed under provisions of Section 143(3) of the Income Tax Act (hereinafter referred to as "the Act"). On that basis, the assessment order was framed on 06.02.2003.

4. The Commissioner of Income Tax-III, New Delhi examined this file and felt that the assessment order was perfunctory and erroneous and it was prejudicial to the interest of the Revenue. According to the CIT no detailed investigation had

been carried out by the Assessing Officer while making the assessment. Solitary objection of the Commissioner related to the expenditure on tools and dyes aggregating to Rs. 10,56,69,367/-, which was claimed as revenue expenditure and was allowed as such. According to the Commissioner, he noticed that otherwise substantial expenditure during the year and details of the expenditure filed before the Assessing Officer also showed that the cost of some of the dyes exceeded Crores of rupees. The CIT accordingly issued notice on 03.11.2004 to the assessee to show-cause why appropriate order u/s 263 be not passed by him with a view to correct the lapse committed by the AO.

5. The assessee responded to the said show-cause notice and gave its explanation. The assessee also contended that the show-cause notice was required to be dropped for the following reasons:

- i) The assessee has been consistently following the practice of debiting the cost of tools and dyes from the profit and loss account since 1986;
- ii) Amount is otherwise also allowable;
- iii) The items in question do not have a long life;
- iv) Number of dyes are consumed for the same product to meet the production level in a year;
- v) The company had to maintain the accuracy of the parts being in the buyer's market;
- vi) Reimbursement cost of the dyes is embedded in the sale rate of the component and to have the matching theory the expenditure must be debited;
- vii) No part of dye developed/purchased or items produced out of these can be disposed of by the company in the market as per the restriction clause;
- viii) During the process of manufacturing the inserts of dyes get consumed and become a part of final product and therefore represents consumables;
- ix) Recording of dyes in the store record as of consumable items.

6. Pursuant to the information sought by the CIT in respect of those dyes' cost whereof exceeded Rs. 10 lakhs, following details were furnished:

- i) One set dye for Cover Cylinder Head Rs. 1,62,56,175/-
- ii) Two set dyes of Crank Case Left Rs. 72,12,109/-
- iii) One set of dye lower and upper transmission case Rs. 4,33,43,245/-
- iv) One set of dye for case transmission Axle Rs. 1,30,10,013/-
- v) Five dyes for pistons Rs. 84,55,804/-

7. The assessee also gave further details and supporting documents to prove as the purchase of dyes by the assessee and the date of replacement of old dyes by

new one showed that it needed replacement. Some such purchases made from the outside parties including Maruti Udyog Limited, a major buyer of the assessee's products and some dyes had been produced in house as well. After considering all these materials, the CIT took the view that the accounting practice followed by the assessee to debit the entire cost of tools and dyes in the year of installation, was not correct and he remitted the case back to the Assessing Officer for re-examination of all aspects of the issue of allow ability of tools and dyes expenses and reframed the assessment. The detailed order passed by the CIT in this behalf reveals that the CIT took up certain items of purchase for discussion value whereof exceeded Rs. 10 lakhs in respect of item "die lower and upper transmission case" cost of which was Rs. 4,33,46,245/-. The CIT found that a set of two dyes - one lower portion and one upper portion - was purchased from Maruti Udyog Ltd. on 14.02.2001. The cost of each was divided at Rs. 2,16,73,124/-; new lower dye purchased on 14.02.2001 was replaced by the old dye on 28.02.2001 from which he concluded that this new dye was used only for one month during the previous year under consideration and entire cost of dye was debited against the profits and loss account, which was accepted by the Assessing Officer. According to the CIT, if the dyes were treated to be capital assets, the assessee would have been entitled only 50% of the eligible depreciation since the dye was used for less than 180 days. Even if, it was no to be treated as capital assets, then also only the proportionate cost of the dye, determined with reference to, say, the number of parts manufactured from it during the previous year could not have been claimed as revenue expenditure.

8. Insofar as, Transmission Case Upper Dye is concerned, it was purchased on 14.02.2001 and installed on 05.03.2001, thus otherwise also used for manufacture only. The CIT opined that dye costing over Rs. 2 Crores was not a small item and its life span was not a few days, but still a year, but could even be more. On this basis, view of the CIT was that the accounting practice followed by the assessee was in proper. In this behalf, the CIT made the following observations:

18. It thus becomes clear that the accounting practice following by the assessee of debiting the entire cost of expensive dyes having lifespan of a year or more in the year of installation itself without considering the balance exploitable potential of the dies is not a proper practice.

19. It is also seen that there is no uniformity in the cost of tools and dies debited from year to year. It not only distorts the position of true profits by shifting profits of one year to another but also opens up the possibility of manipulating the profits by manipulating the installation of the expensive dies.

For these reasons, he wanted the AO to re-examine "all aspects of the issue of allow ability of tools and dyes expenses and reframe the assessment".

9. The assessee challenged this order by filing appeal before the Income Tax

Appellate Tribunal (hereinafter referred to as "the Tribunal") on various grounds. All these submissions are taken note of by the Tribunal in the impugned order. Likewise, detailed submissions made by the departmental representative are mentioned in the order of the Tribunal. After considering these submissions, the Tribunal has passed the impugned order dated 09.12.2005 allowing the appeal of the assessee for the following reasons:

a) From financial year 2000-01, it became an independent company and followed the same accounting practice.

b) CIT had given a finding that the life of dyes was approximately one year or so. Thus, CIT failed to appreciate that with this life span of the dyes, the assessee was not deriving any enduring benefit so as to treat it as the capital expenditure.

c) The assessee was a manufacturer of car parts and in this manufacturing process, dyes are fitted in the machines by which the car parts are manufactures. Therefore, it was a case of replacement of burnt out, and not new one so as to treat as capital expenditure. By replacing these dyes, the life of existing machines was not enhanced either with the replacement of these parts, production capacity remains the same. The judgment of Karnataka High Court in the case of Commissioner of Income Tax Vs. Mysore Spun Concrete Pipe Pvt. Ltd., was relied upon, whereof replacement of moulds, which was a part of the machinery was treated as revenue expenditure.

d) Though the CIT initiated the proceedings on the ground that the expenditure incurred on dyes was a capital expenditure, while passing the final order he could not arrive at a definite finding that the expenditure was capital in nature, but remitted the matter back to the Assessing Officer to re-examine the issue as to whether the expenditure incurred on dyes and tools was revenue or capital expenditure. Such an order in exercise of power of u/s 263 of the Act could not be passed, as held by the Bombay High Court in Commissioner of Income Tax Vs. Gabriel India Ltd., .

e) Since the CIT had not come to a definite finding, this order itself showed that two views were possible and in a case like this, proceedings u/s 263 were clearly erroneous as held by the Supreme Court in the case of MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX,

10. Mr. Sanjeev Sabharwal, learned Counsel appearing for the Revenue submitted that the assessment order passed by the Assessing Officer, even if it was u/s 143(3) of the Act would clearly manifest that no reasons were given by the AO while allowing the entire expenditure as revenue expenditure. In the said order, there was not even a discussion about this item of expenditure. It was thus a clear case where AO had not investigated the matter properly. Therefore, provisions u/s 263 of the Act could rightly be invoked by the CIT. For this purpose, he referred to the detailed order passed by the Commissioner of Income Tax u/s 26, the substance whereof has already been taken note of above. To buttress this submission, he referred to the judgment of this Court in

the case of *Gee Vee Enterprise Vs. Additional Commissioner of Income Tax*, which was upheld by the Supreme Court in *Malabar Industrial Co. Ltd. (supra)*. He also submitted that the observations of the Tribunal that the assessee had claimed such expenses on dyes and tools as revenue expenditure since Financial Year 1988-89 was clearly erroneous and referred to the affidavit filed by the Revenue in this behalf, pursuant to the orders dated 19.03.2008 passed by this Court. His further submission was that the order u/s 263 was only initiation and not the conclusion of the proceedings. It was similar to the exercise of power u/s 147/148 of the Act. According to him, when the matter was not examined properly by the AO and for want of sufficient material, CIT could not come to the definite conclusion. He was right in referring the matter back to the Assessing Officer for this purpose and no case for interference with such an order was made out by the assessee at this stage. Therefore, the impugned order of the Tribunal was clearly erroneous. In support, he relied upon in the case of *Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.*, which inter alia holds:

The expression "reason to believe" in Section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer.

He also relied upon the following two judgments:

(i) *The Commissioner of Income Tax, Madurai, Vs. Saravana Spinning Mills Pvt. Ltd.*,

(ii) *The Commissioner of Income Tax Vs. Seshasayee Paper and Boards Ltd.*,

In the first case, the expression "the current repairs" u/s 31 is expenditure by the Court in the following terms:

This Court in the case of *Ballimal Naval Kishore and Another Vs. Commissioner of Income Tax*, approved the test formulated by Chagla CJ., in the case of *New Shorrock Spinning and Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North*, as to when the expenditure can be said to have been incurred on current repairs. In that case it was observed as follows:

The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being

done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of "repairs" because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure.

If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which the Legislature has permitted u/s 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure.

In the said judgment, it has been further observed by Chagla C.J. that the definition of the word "repair" does not create much difficulty, but the difficulty is created by the word "current" which qualifies the expression "repair". This adjective, namely, "current" is put in by the Legislature. It indicates that the Legislature did not intend that the assessee should be permitted to claim allowance for all kinds of repairs, even though conceptually the expenditure may be revenue expenditure. The Legislature intended to stress that u/s the permissible deduction admissible is only for current repairs, therefore, the question as to whether the expenditure incurred by the assessee conceptually is revenue or capital in nature is not relevant for deciding the question as to whether such an expenditure comes within the etymological meaning of the expression "current repairs". In other words, even if the expenditure is revenue, it may not fall in the connotation of "current repairs" in Section. The test formulated above applies to cases where the assessee claims allowance under Section. In the present case, the High Court has lost sight of the test to be applied for an expenditure to fall u/s as "current repairs". It has embarked on the test which was not applicable, viz, whether the expenditure is revenue or capital in nature. The above test was not relevant during the assessment years in question as the explanation to Section was inserted later on. In our view, applying the test laid down by Chagla C.J. in the case of New Shorrock Spinning and Manufacturing Co. Ltd. (supra) the assesseees were not entitled to claim allowance u/s for current repairs. In our view, the Ring Frame by itself constituted an independent machine with an independent function, which was replaced by a new Ring Frame giving enduring advantage to the assessee and, therefore, the expenditure incurred in that regard cannot come within the expression "current repairs". In our view, replacement of three Ring Frames constituted substitution of an old asset by a new asset and, therefore, the expenditure incurred did not constitute current repairs.

In the second case, the thrust of the learned Counsel was on the following observation:

It is no doubt true that for making a valid order u/s 263 of the Act, it is essential for the Commissioner to record an express finding that the order sought to be

revised was erroneous as well as prejudicial to the interests of the Revenue. In the instant case, the Commissioner had recorded such a finding and with reference to some of the items he positively found that the orders were erroneous and prejudicial to the interests of the Revenue. But, in our opinion, there is nothing in Section 263 of the Act to show that the Commissioner of Income Tax should in all cases record his final conclusion on the points in controversy before him. The above position of law is well-settled by the decision of the Gujrat High Court I the case of Additional Commissioner of Income Tax, Gujarat Vs. Mukur Corporation, wherein the Gujarat High Court held as under:

Now, even o this question, we find that there is nothing in Section 263(1) to show that before passing the final order under that Section, the Commissioner must necessarily and in all cases record final conclusions about the points in controversy before him. As already noted by us above, we would have expected him to record final conclusions, which he thought proper if he was to settle the assessment finally but since he has not settled the assessment finally, and has preferred to direct the Income tax Officer to make an order for fresh assessment it was proper that he did not express any final conclusions and recorded only prima facie conclusions at which he had arrived with reference to the facts of the case. Here it should be noted that, as the assessment was to be freshly made by the Income Tax officer, the only proper course for the Commissioner was not to express any final opinion as regards the controversial points.

11. Mr. M.S. Syali, learned Senior counsel appearing for the assessee justified the order of the Tribunal for the reasons stated therein. His first submission was that it was misconceived on the part of the Revenue to argue that the AO had not considered this aspect, viz., whether the expenditure in question was revenue or capital expenditure. He argued that the assessment was carried out u/s 143(3) of the Act and while doing so, the AO had made certain quarries on this aspect, which was clear not only from the order of the AO, but even from the reading of Para 2 and 3 of the CIT's order wherein it is specifically noted that the assessee had field its explanation before the AO in support of its claim vide letter dated 26.09.2002 and that letter is also reproduced. He pointed out that the CIT had also noted that the explanation of the assessee was accepted by the AO, which would clearly imply that specific consideration on this aspect was duly bestowed by the Assessing Officer. His argument was that when the AO was accepting the plea of the assessee after the inquiries, it was not necessary by the AO to give detailed reasons in his assessment order, as such an assessment order is not to be written as a judgment. He sought to draw a subtle distinction between "lack of inquiry" and "inadequate inquiry". According to him, the present case could not be treated as a case of lack of inquiry, since the inquiry in fact was made by the AO. Even if it is to be presumed that inquiry was inadequate, the CIT had not given any definite opinion by giving any specific finding as to whether expenditure incurred by the assessee on the replacement of dyes and tools was of revenue or capital nature. Such an order, according to the learned Senior counsel, was not permissible as held in Grabiell India Ltd. (Supra). He also

argued that in the entire order of the CIT, there was no assessment of incorrect facts before the AO on the basis of which the AO made the assessment. He further pointed out that the method of accounting as adopted by the assessee was in fact even accepted by the revenue in the later years, which itself knocks the basis of the impugned order. His further contention was that there was no concept of deferred revenue expenditure in the income tax laws and only to the limited extent, viz., in those cases of continuous liability in subsequent years, such expenditure could have been treated as revenue expenditure as held in *M/s. Madras Industrial Investment Corporation Ltd. Vs. The Commissioner of Income Tax, Tamil Nadu-I, Madras*, in the following terms:

The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3,00,000 in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years., Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Thus in the case of *Hindustan Aluminium Corporation Ltd. v. Commissioner of Income Tax, Calcutta-I* the Calcutta High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.

Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.

He reiterated that in the present case, the tools and dyes had a very short span of life and it could produce up to maximum 1 lakh permissible shorts and have to be replaced thereafter to retain accuracy, as explained by the assessee before the CIT duly noted by the CIT in his order. He further pointed out that most of the parts manufactured are for the automobile industries which have to work on complete accuracy at high speed for a longer period. It was further explained that since it is an ongoing procedure, a company had produced 10,75,000/- sets whose selling rates is inclusive of the reimbursement of the die's cost. The purchase orders indicating the costing includes the reimbursement of dyes costing where produced before the AO. It was explained that since the sale rate

includes the reimbursement of dyes cost in order to have the matching effect, the cost of the dyes has been claimed as revenue expenditure. Learned Counsel also extensively read from the judgments, which are taken note of by the Tribunal in its order.

12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income Tax u/s 263 of the Income Tax Act. As noted above, the submission of learned Counsel for the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as Revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned Counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In *Gabriel India Ltd. (Supra)*, law on this aspect was discussed in the following manner:

xxx.... From a reading of Sub-section (1) of section, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income Tax Officer is "erroneous in so far as it is prejudicial to the interests of the Revenue". It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in Sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See *Parashuram Pottery Works Co. Ltd. Vs. Income*

Tax Officer, Circle I, Ward A, Rajkot,

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From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income Tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income Tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income Tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income Tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income Tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.

x x x

There must be some prima facie material on record to show that tax which was lawfully eligible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

x x x

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income Tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income Tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income Tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard....

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13. When we examine the matter in the light of the aforesaid principle, we find that the AO had called for explanation on this very item, from the assessee and the assessee had furnished his explanation vide letter dated 26.09.2002. This fact is even taken note of by the Commissioner himself in Para 3 of his order

dated 03.11.2004. This order also reproduces the reply of the respondent in Para 3 of the order in the following manner:

The tools and dies have a very short life and can produce upto maximum 1 lakh permissible shorts and have to be replaced thereafter to retain the accuracy. Most of the parts manufactured are for the automobile industries which have to work on complete accuracy at high speed for a longer period. Since it is an ongoing procedure, a company had produced 10,75,000 sets whose selling rates is inclusive of the reimbursement of the dies cost. The purchase orders indicating the costing includes the reimbursement of dies cost are being produced before your honour. Since the sale rate includes the reimbursement of die cost and to have the matching effect, the cost of the dies has been claimed as a Revenue Expenditure.

14. This clearly shows that the AO had undertaken the exercise of examining as to whether the expenditure incurred by the assessee in the replacement of dyes and tools is to be treated as revenue expenditure or not. It appears that since the AO was satisfied with the aforesaid explanation, he accepted the same. The CIT in his impugned order even accepts this in the following word:

AO accepted the explanation without raising any further questions, and as stated earlier, completed the assessment at the returned income.

15. Thus, even the Commissioner conceded the position that the AO made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the AO should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of "lack of inquiry".

16. Having put the records straight on this aspect, let us proceed further. Is it a case where the Commissioner has concluded that the opinion of the AO was clearly erroneous and not warranted on the facts before him and, viz., the expenditure incurred was not the revenue expenditure but should have been treated as capital expenditure? Obviously not. Even the Commissioner in his order, passed u/s 263 of the Act, is not clear as to whether the expenditure can be treated as capital expenditure or it is revenue in nature. No doubt, in certain cases, it may not be possible to come to a definite finding and therefore, it is not necessary that in all cases the Commissioner is bound to express final view, as held by this Court in *Geevee Enterprise* [supra]. But, the least that was expected was to record a finding that order sought to be revised was erroneous and prejudicial to the interest of the revenue. [see *Sashayee Paper*(supra)]. No basis for this is disclosed. In sum and substance, accounting practice of the assessee is questioned. However, that basis of the order vanishes in thin air when we find that this very accounting practice, followed for number of years, had the approval of the income tax authorities. Interestingly, even for future assessment years, the same very accounting practice is accepted.

17. It is in this context the question that assumes importance is as to whether

powers could be exercised u/s 263 of the Act when two views are possible and following observations of the Tribunal, in this backdrop, become relevant:

38. Still further, the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.* (supra) has held that when two views are possible and the AO has taken one of the possible view, then the order cannot be held to be prejudicial to the interest of the Revenue. Since the CIT could not come to a definite finding that the expenditure in question was a capital expenditure in the proceedings u/s 263, in our opinion, the order of the AO could not be held to be erroneous.

18. Let us look into the matter from another angle. What was the material/information available with the AO on the basis of which he allowed the expenditure as revenue? It was disclosed to him that the assessee is a manufacturer of car parts. In the manufacturing process, dyes are fitted in machines by which the car parts are manufactured. These dyes are thus the components of the machines. These dyes need constant replacement, as their life is not more than a year. The assessee had also explained that since these parts are manufactured for the automobile industry, which have to work on complete accuracy at high speed for a longer period, replacement of these parts at short intervals becomes imperative to retain accuracy. Because of these reasons, these tools and dyes have a very short span of life and it could produce maximum one lakh permissible shorts. Thereafter, they have to be replaced. With the replacement of such tools and dyes, which are the components of a machine, no new assets comes into existence, nor is their benefit of enduring nature. It does not even enhance the life of existing machine of which these tools and dyes are only parts. No production capacity of the existing machines is increased either. The Tribunal, in these circumstances, relied upon the judgment of *Mysore Spun Concrete Pipe Pvt. Ltd.* (supra), wherein Karnataka High Court held that the replacement of moulds was not in the nature of replacement of a capital machinery, but in the nature of replacement a part of the machinery which in turn was in the nature of maintenance of machinery installed in the factory. Such an expenditure was treated as revenue expenditure. With this position in law, it is clear that view taken by the AO was one of the possible views and therefore, the assessment order passed by the AO could not be held to be prejudicial to the revenue. Such an order thus has rightly been set aside by the Tribunal.

19. When we consider the matter in the aforesaid perspective, it also becomes clear that the judgments under which Mr. Sanjeev Sabharwal, learned Counsel for the Revenue, had taken umbrage would not be applicable in the instant case and, therefore, would not come to his rescue. In *Saravana Spinning Mills Pvt. Ltd.* (supra) where the Supreme Court expounded the principle of "current repairs", clear finding recorded was that ring frames would constitute independent and separate machine capable of independent and specific functions, as is clear from the following observations:

In our view, the A.O. was right in holding that each machine including the Ring Frame was an independent and separate machine capable of independent and

specific function and, therefore, the expenditure incurred for replacement of the new machine would not come within the meaning of the words "current repairs". In the present case, it is not the case of the assessee that a part of the machine (out of 25 machines) needed repairs. The entire machine had been replaced. Therefore, the expenditure incurred by the assessee did not fall within the meaning of "current repairs" in Section.

In the present case, finding is just the opposite, viz., dyes and tools are part of the machines. Replacing these dyes the purpose is to maintain the existing assets, viz., machine and not to bring a new asset. Moreover, case at hand is not a case of "repairs of machinery" which was the situation in *Sarvana Prinning* (supra). The present case proceeded on the controversy right from the order of A.O. till ITAT as to whether this expenditure was revenue or capital in nature. Even before us, arguments rested on this aspect.

20. Likewise, whether the Commissioner should have recorded definite finding or not, may not be very relevant factor in the present case where on the facts of this case we have found that the opinion of the AO in treating the expenditure as revenue expenditure was plausible and thus there was no material before the CIT to vary that opinion and ask for fresh inquiry.

21. Thus, from whatever the matter is to be looked into, the conclusion would be that the order of the Tribunal does not call for any interference as the question of law has rightly been decided. We, thus, answer this question in favour of the assessee and against the Revenue, consequence whereof this appeal is dismissed with cost.