

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.26/RJT/2013
Assessment Year : 2009-10
AND
ITA No.130/RJT/2015
Assessment Year : 2010-11**

M/s.Castech Foundries P Ltd. 1708/09, GIDC Estate-II Dolapara Junagadh 362 003.	Vs	JCIT, Junagadh Range-1 Junagadh.
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(Applicant)		(Responent)
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Assessee by :	Shri Mehul Ranpura, AR
Revenue by :	Shri S.S. Rathi, Sr.DR

सुनवाई की तारीख/Date of Hearing : 30/03/2022
घोषणा की तारीख /Date of Pronouncement: 22/06/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These two appeals are filed by the assessee against order dated 3.12.2012 and 23.1.2015 passed by the Commissioner of Income-tax (Appeals), Rajkot relating to the same Asst.Year 2009-10 and 2010-11. Since the main issues raised in both the appeals are similar, both these appeals are disposed of by this common order.

2. The grounds raised in these appeals read as follow:

Asstt.Year 2009-10

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. Theld.CIT(A) erred in facts as also in law in confirming disallowance of power expense of Rs.45,39,000/- on the alleged ground of use for non-business purpose. The disallowance may kindly be deleted.

3. The ld.CIT(A) erred on facts as also in law in confirming disallowance of gratuity expenses of Rs.3,08,069/- treating the same as over and above actual contribution made. The disallowance may kindly be deleted.”

Asstt.Year 2010-11

“1. The decision of theld.CIT(A) to disallow power expenses of Rs.34,17,348/- (disallowance made as per assessment order Rs.55,78,111/- less: Relief allowed as per order of CIT(A) Rs.21,60,763/- may kindly be deleted.

2. Levy of interest u/s.234B & 234D and recovery of interest u/s.244A of the Act be deleted.”

3. The ground no.3 raised in the Asst.Year 2009-10 has not been pressed for adjudication, and therefore, the same is accordingly dismissed. Now only effective common ground raised in both the appeals is disallowance of power expenses on the ground that the same was used for non-business purpose. For adjudication of this issue, we take the facts of the case from the Asst.Year 2009-10.

4. Briefly stated facts are that the assessee is a private limited company engaged in manufacturing of steels & alloy steel casting and wind electric power. For the Asst.Year 2009-10, the assessee has filed its return of income on 17.9.2009 declaring income at Rs.51,57,070/-. After processing the return under section 143(1) of the Act, the case was selected for scrutiny assessment by issuance of notice under section 143(2) of the Act. During the assessment

proceedings, the ld.AO noticed that assessee has claimed various expenses at higher rate as compared to the preceding year, which also included electric power & fuel consumption. In the other words, the assessee has claimed expenses in respect of electric power & fuel consumption for Rs.1,80,98,554/-, while such expenses was Rs.1,77,41,632/- in the preceding Asst.Year 2008-09. Therefore, the assessee was asked to file reasons for increase of this expense. The only reply filed by the assessee was that the rate of electricity power was increased from 4.63 to 5.44 per unit and rate of LPG per unit was also increased from Rs.40.88 to Rs.45.29, and therefore, the expense under this head was higher in comparison to the earlier year. Assessee filed copies of relevant supporting bills. However, the ld.AO was not satisfied with the explanation of the assessee that increase in power expenses was disproportionate to the sales, that is, the increase in expenditure on power has increased from Rs.1,77,41,632/- for preceding year to Rs.1,80,98,554/- for the present year, whereas the sale was decreased from Rs.32,15,27,685/- for preceding year to Rs.24,57,22,521/- for the year under consideration. The ld.AO observed that there was no satisfactory explanation for abnormal increase in the power consumption. The assessee has further claimed that there was increase in export sales, but according to the AO, the increase in the value of export sales not because of quantum of sales, but because increase in exchange rate of EURO. Even the AO noticed decrease in the quantum of finished goods as compared to the preceding year. Further, material consumption in the manufacturing process was for Rs.12,58,75,530/- as against Rs.19,62,83,678/- in the preceding year, and therefore, consumption of power also ought to be proportionately decreased, in other words, the expenses should always be proportionate to

production/sales unless some abnormal reasons existed, which were absent in the present case. Thus, the ld.AO made disallowance of Rs.45,39,000/- out of power expenses by estimating reasonable expenses in proportion to sales claimed by the assessee with that of the preceding year.

5. Aggrieved by the order of the AO, the assessee went in appeal before the ld.CIT(A). The ld.CIT(A) after considering the submissions of the assessee and order of the AO observed that the expenditure incurred on consumption of power was beyond the requirement of the assessee, however, the ld.AO has given due concession to the assessee by estimating reasonable expenditure in proportion to production/sales and material consumed during the previous year. Accordingly, the ld.CIT(A) confirmed the order of the AO and dismissed the appeal filed by the assessee.

6. Further aggrieved, the assessee is now before the Tribunal. Before us, the ld.counsel for the assessee while reiterating the submissions made before the Revenue authorities, also submitted that assessee is engaged in the manufacturing activities, which involved various process like molding, pattern making, melting, casting, finishing, inspection etc. Even in some process, moulding got damaged every time, till the final casting was made which process consumed more electronic power, energy and man powers. That apart, when the machinery used for manufacturing activities gets aged, consumption of electricity is bound to be more year after year because of normal wear and tear. These fundamental facts have not been considered by the lower authorities and made estimation of the expenditure on the basis of previous year's expenditure, which is not justifiable in law. Further, the Revenue authorities have assumed that the consumption of power for non-

business purpose, and not wholly and exclusively for the business of the assessee. This is a mere assumption without any basis. There is nothing on record to suggest that part of the expenditure relatable to other business. The Id.AR further submitted that the Revenue has not doubted the genuineness of the expenditure, but held that there was excess expenditure as compared to the previous year. This assumption is without any justification. Therefore, the Id.counsel submitted that the disallowance of Rs.45,39,000/- be deleted.

7. On the other hand, the Id.DR supported orders of the Revenue authorities. He further submitted that concurrent findings of the both the authorities are to be upheld, in view of the fact that the explanation offered by the assessee was not supported by any evidences.

8. We have given our thoughtful consideration to the facts of the present case and also gone through orders of the Revenue authorities. We find that the Id.AO has disallowed an estimated power expenses of Rs.45,39,000/- out of total expenses of Rs.1,80,98,554/- in proportion to sales of the previous year on the ground that expenses claimed was very high vis-à-vis similar expense claimed in the earlier years. The case of the assessee was that increase in power consumption bill was due to increase of power tariff by the electricity company, for which the assessee has no control. Besides that the assessee company is an engineering unit involved in the process of molding, pattern making, melting, casing, finishing etc. The assessee produces different types of products with different specifications as per the requirement of the customers, and each specification requires different types of process, and during the process, there are failures and rejection, which

ultimately resulted in repetition of the production process consuming more electricity than normally required. Besides that, when the machineries get aged, the consumption of electricity would normally be more than the earlier years. Therefore, in this type of production process, there is no logic in quantifying consumption of electricity with sales as made by the Revenue. Assumption of the Revenue that excess consumption of electricity was not exclusively for the purpose of the business only was not borne out of any material evidence. We find that the reasons given by the assessee for claiming excess expenditure on power consumption are justifiable. The AO has not considered various other factors which are relevant for increase in power expenses. Therefore, we incline to delete the disallowance of Rs.45,39,000/- made on account of power consumption. We do so, and allow this ground of appeal of the assessee.

9. As far as appeal of the assessee for the Asst.Year 2010-11 is concerned, the assessee had claimed power expenses of Rs.1,06,50,497/-. The ld.AO by applying the method adopted in the last year, restricted power expenses on prorata basis at Rs.55,78,111/-. The same was challenged before the ld.CIT(A). ld.CIT(A) however has given partial relief to the assessee on this issue by directing the AO to calculate power consumption expenditure in proportion to material consumed at 24.78% being percentage of material summed to electricity/fuel consumption in Asst.Year 2008-09 instead of sale ratio adopted by the AO. In this assessment year 2010-11, we do not find any material change in facts and circumstances of the case so as to warrant us to take a different the view, contrary to the view taken in the Asst.Year 2009-10, more so when the reasons advanced by both the parties are on the same footing that of the previous year. Therefore, following our

observation made in Asst.Year 2009-10, we delete the impugned disallowance and allow this ground of appeal.

10. So far as ground regarding levy of interest under section 234B & 234D are concerned, the same consequential in nature. The ground regarding initiation of penalty under section 271(1)(c) of the Act is concerned, the same is premature at this stage. Therefore, both these grounds are accordingly disposed off.

11. In the result, both appeals of the assessee are partly allowed.
Order pronounced in the Court on 22nd June, 2022 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, dated 22/06/2022