REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No.14/2005, 1600 & 1670/2010**

RESERVED ON: 20.05.2011

% PRONOUNCED On: 03.06.2011

ITA No.14/2005

M/s. Bharat Gears Limited .....Appellant
through : Mr. O.S. Bajpai,
Sr. Advocate with
Mr. V.N. Jha

VERSUS

Commissioner of Income-Tax, Central I
New Delhi .....Respondent
through: Ms. Prem Lata Bansal,
Sr. Advocate with
Mr. Deepak Anand

ITA Nos.1600/2010 and 1670/2010

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CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. In all these three appeals the assessee is the same and even the issue is identical, which pertains to three different assessment years, the factual premise on which such an issue has arisen for consideration is somewhat different. Therefore, we propose to first take up the facts of ITA No.14/2005 to understand and appreciate the question of law on which this appeal is admitted.

ITA No.14/2005

2. This appeal relates to assessment year 1994-95 and is filed by the assessee. In this year the assessee had claimed an expenditure of Rs.83,79,134/- as revenue expenditure on the ground that this was incurred by repairs and reconditioning of Fent Gear Machine and was in the nature of "current repairs". This machine was purchased by the assessee in the year 1981 and it broke down on 24.10.1991. The work for repairs was assigned to M/s. HMT Limited, a concern of the Government of India. The said HMT Limited submitted the appeal in the aforesaid sum for carrying out the repairs. The Assessing Officer was of the view that the expenditure of the aforesaid magnitude incurred by the assessee for reconditioning the machine had given the

assessee a benefit of enduring nature and therefore, the amount was not allowable as current repairs. He, thus, treated the expenditure as capital in nature and allowed depreciation @ 12.5%. According to him, it was evident not only from the quantum of expenditure, which was huge, while reconditioning the machine various spare parts were replaced. The assessee challenged the order of the Assessing Officer and the matter was re-examined by CIT(A) in appeal who held otherwise. He was of the view that expenditure was of revenue nature. While giving this finding the CIT(A) was influenced by the following factors:-

> "(a) The repairs have been carried out by a purchase memo where the mandate regarding the capacity of the machine is recorded and it is mentioned that machine shall be complete in all respects as per the machine catalogue. Thus, the mandate was to bring the efficiency of the machine at best to the level of original performance.
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> (b) The AO has been guided for making the disallowance on account of the largeness of the quantum.
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> (c) The repairs have been carried out by HMT Limited, which a Government concern."

3. Taking into consideration the aforesaid facts, the CIT(A) held that the capacity of the new machine was not more than the original machine; the motors etc. are of the same nature which were with the original machine; and the quantum of expenditure was not a relevant parameter for considering the disallowance of repair expenses.

4. The Revenue felt aggrieved by the aforesaid order of the CIT(A) and challenged the same in appeal before the ITAT in which the Revenue succeeded. The ITAT reversed the orders of the CIT(A) and restored that of the Assessing Officer. The ITAT observed that they found ample force in the contention of the Revenue to the effect that the machinery had outlived its utility and therefore, the impugned expenditure has resulted in bringing into existence altogether new machinery or in other words, the appellant secured a benefit of enduring nature. The ITAT in the same para observed that they were conscious of the assessee's plea that there had been no enhancement in the capacity of the machinery even after incurring the expenditure on repairs, but according to the ITAT, the repairs had enhanced the life of the machinery. The ITAT further observed that admittedly the machinery is used in the production process of the assessee and is an apparatus by way of which the profit of business are generated. Therefore, the Tribunal held that it had no hesitation in concluding that the expenses had resulted in a benefit of enduring nature in the capital field.

5. In support of this conclusion, the ITAT relied upon the following extract from the judgment of the Apex Court in ***Empire Jute Co. Ltd.*** **vs.** ***CIT***, [1980] 124 ITR 1 (SC):-

> "There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every

> advantage of enduring nature acquired by the assessee that brings the cases within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consist merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."

6. In the background of the above extract, the ITAT observed in para 17 that machine which was lying idle in a broken down position and was unfit for production resulted in a benefit of enduring nature by subsequent reconditioning and imparting useful life to hitherto an old and unfit machinery. On the basis of this plea the ITAT came to the conclusion that "this benefit of enduring nature is very much in capital field inasmuch as the machinery is an apparatus for manufacturing products, thereby generating profits by way of sales. It cannot be said that the expense is merely to facilitate the assessee's business operations or enabling the management and conduct of business more efficiently and profitably. The expense, having regard to the facts and circumstances of the case, has its bearing on the fixed capital of the assessee, which, *inter alia*, generates profits."

7. Against this conclusion of the ITAT thereby disallowing the expenditure as current repairs and instead capitalizing the same, present appeal is preferred by the assessee. This appeal was admitted on the following substantial question of law:-

    1) Whether on the facts and circumstances of the case, the expenditure of Rs.83,79,134/- incurred on repairs and reconditioning of Fent Gear Machine was an expenditure of revenue nature or of capital nature?

    2) Whether on the facts and circumstances of the case, expenditure, in question, was allowable u/s 31 and/or u/s 37(1) of the Act.

8. Mr. O.S. Bajpai, learned senior counsel appearing for the appellant/assessee submitted that the expenditure in question needs to be treated as expense on account of 'current repairs'. According to him, the following aspects which were vehemently put forth and highlighted made the expenditure in question revenue in nature having regard to the latest judgment of the Supreme Court in the case of ***CIT*** **vs.** ***Sri Mangayarkarsai Mills Pvt. Ltd.***, [2009] 315 ITR 114 (SC):-

    i. It is a case of maintaining and preserving the machine.

    ii. It is not a case of replacement.

    iii. It does not create any new asset.

iv. It only restores the functional efficiency by removing the defect.

v. It does not increase the capacity of production. It only prevents the loss.

vi. It is not an independent unit and cannot be compared with ring frames of a textile mill. It only performed the functions of machining of gears produced in the preceding line of manufacture by performing earlier functions.

vii. Quantum of repairs is not the relevant criterion determinative of the nature of expenditure as to whether it is current repairs or not.

viii. Enduring benefit is no longer a criterion. After current repairs, machine becomes usable for or number of years. That does not mean that the expenditure on current repairs is in the capital field.

ix. Replacement of worn out parts in the process of current repairs is not the replacement of the plant and machinery itself.

9. An alternative submission was also made that when a machine which is put to continuous use for decades is to be replaced, even the expenditure incurred on the replacement of the said machine is to be

treated as expenditure on account of current repairs in view of the aforesaid judgment of the Supreme Court in ***Sri Mangayarkarsai Mills Pvt. Ltd.*** (supra) and ***CIT* v. *Saravana Spinning Mills Pvt. Ltd.***, [2007] 293 ITR 201 (SC).

10. Mrs. Prem Lata Bansal, learned senior counsel appearing for the Revenue, countered the aforesaid submissions adopting the reasons given by the Tribunal and also relying upon the same judgments which are referred to by the learned counsel for the appellant.

11. We have considered the respective submissions. The nature of repairs which were carried in the instant case has already been stated above. It would be useful to refer to the legal position to find an answer as to whether such repairs, in the given case, would constitute as current repairs and thus, revenue in nature or it should be treated as capital expenditure. Any expenditure incurred by an assessee can qualify for deduction under Section 37 of the Income-Tax Act (hereinafter referred to as the 'Act') only if it is incurred wholly and exclusively for the purposes of his business. However, at the same time, fulfillment of this requirement would not be enough to qualify for deduction. It is also to be shown that the expenditure in question is revenue in nature as distinguished from capital expenditure. Over a period of time, through case laws, courts have delineated certain yardsticks to find out whether

the expenditure would be of a revenue nature or of a capital nature. It has now become an accepted principle that if an amount is spent for the purpose of bringing into existence a new asset or obtaining a new advantage, then such expenditure would be capital in nature. Another yardstick, which is adopted is to find out whether the expenditure is incurred for obtaining an advantage of enduring benefit. If it is so, then the expenditure should normally be treated as capital in nature. However, at the same time it is not every advantage of enduring nature acquired by an assessee that would bring the case within the fold of capital expenditure. In ***Empire Jute Co. Ltd.*** **v.** ***Commissioner of Income-Tax***, [1980] 124 ITR 1, the Supreme Court formulated the following principles on this aspect:-

> "(i) It is not a universally true proposition that what may be a capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer.
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> (ii) There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. **What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application**

> **of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.** The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.
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> (iii) What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency."
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> (emphasis supplied)

12. When the expenditure is incurred on the repairs of a machinery, plant or furniture used for the purposes of business or profession, specific provision is made in Section 31 of the Act. This Section, *inter alia,* provides that if the amount paid is on account of "current repairs" then deduction in respect of the said amount is to be allowed. We may point out at this stage itself that Explanation to this Section was inserted by the Finance Act, 2003 with effect from 1st April, 2004, which is to the effect that such current repairs shall not include any expenditure in the nature of capital expenditure. This Explanation read as under:-

> "[*Explanation.*-For the removal of doubts, it is hereby declared that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.]"

13. We will advert to the issue as to whether this Explanation is only clarificatory in nature or it is to operate prospectively. This issue arises in the present case for the reason that we are concerned with the assessment year 1994-95. What is discussed at this stage is that the expenses in respect of those repairs qua machinery, plant or furniture used for the purposes of business or profession is allowed which is on account of "current repairs" and not expense on every kind of repairs. The meaning which is to be assigned to "current repairs" has come up for consideration before the courts on several occasions. However, it is not necessary to take note of and discuss all those decisions. In two recent decisions rendered by the Supreme Court in ***Saravana Spinning Mills Pvt. Ltd.*** (supra) and ***Sri Mangayarkarsai Mills Pvt. Ltd.*** (supra) the entire gamut of case law has been revisited and the principle stated in a most lucid manner. Therefore, discussion on these two judgments must suffice our purpose.

14. In ***Saravana Spinning Mills Pvt. Ltd.*** (supra) (which was also a case pertaining to assessment years 1993-94 and 1994-95) the Supreme Court explained the meaning of "current repairs". It was clarified that

test was not the same as the test for revenue expenditure but different therefrom. The Court took note of its earlier judgment in ***Balliml Naval Kishore and another*** **v.** ***Commissioner of Income-Tax***, (1997) 2 SCC 449 = 224 ITR 414 wherein the test formulated by Chagla, C.J., in the case of ***New Shorrock Spinning and Manufacturing Co. Ltd.***, [1956] 30 ITR 338 (Bom.) was approved. The Bombay High Court in the said judgment had laid down the following test:-

> "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.
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> 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 under section 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure."

15. After extracting the aforesaid, the Supreme Court in ***Saravana Spinning Mills Pvt. Ltd.*** (supra) elucidated this test further in the following manner:-

> "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 under section 31(i) 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 31(i). The test formulated above applies to cases where the assessee claims allowance under section 31(i)."

16. In that case the facts revealed that during the previous year relevant to the assessment years 1993-94 and 1994-95, the assessee, a textile mill engaged in the manufacture of yarn, spent certain amounts for replacement of ring frames which had worn out. It claimed deduction of the amounts spent for replacement under section 31(i) of the Income-Tax Act, 1961, as current repairs. According to the assessee the whole textile mill was a "plant" and the ring frames were one of the 25 machines which constituted one single process and, therefore, replacement of the frames had to be treated only as a replacement of old parts which had become derelict and not replacement of a machine. The Assessing Officer held that by the replacement the assessee had

obtained an enduring benefit and the expenditure incurred constituted capital expenditure and not "current repairs". This decision of the Assessing Officer was reversed by the CIT(A) which view was upheld by the ITAT as well as the High Court. However, the Supreme Court set aside the order of the High Court and restored the opinion of the Assessing Officer holding that the expenditure constituted capital expenditure and not "current repairs". After discussing the test which is to be laid down (which we have already extracted above), the Supreme Court applied the same on the aforesaid facts in the following manner:-

> "In the present case, the High Court has lost sight of the test to be applied for an expenditure to fall under section 31(i) 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 31(i) 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., [1956]* 30 ITR 338 (Bom.) the assessees were not entitled to claim allowance under section 31(i) 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."

17. It would be significant to point out that another judgment of the Supreme Court in ***CIT* v. *Mahalakshmi Textile Mills Ltd.***, [1967] 3 SCR 957 relied upon by the counsel for the assessee was held not applicable and distinguished on the following basis:-

> "On behalf of the assessee, reliance was placed on the judgment of this court in the case of *CIT* v. *Mahalakshmi Textile Mills Ltd.* reported in [1967] 3 SCR 957. In that case, the assessee carried on the business of manufacture and sale of cotton yarn. In the previous year relevant to assessment year 1956-57, the assessee spent Rs.93,000 approximately for introduction of "Casablanca conversion system" in its plant. The Income-Tax Officer disallowed the claim of the assessee. The appellate authority agreed with the Income-Tax Officer. Before the Tribunal, the assessee contended that the amount expended for introducing Casablanca conversion system was current expenditure under section 10(2)(v) of the Indian Income-tax Act, 1922 (section 31(i) of the 1961 Act). The Tribunal inspected the spinning factory of the assessee. It studied the working of the machinery with the Casablanca conversion system. It also studied the literature published by the manufacturer of Casablanca conversion system. After a detailed study, the Tribunal held that on account of the stress and strain of production over a long period there was a need for change and that the assessee had replaced old parts by introducing the said System. Accordingly, the Tribunal treated the expenditure incurred for introducing the Casablanca Conversion System as allowance under Section 10(2)(v) of the Indian Income Tax Act, 1922. The High Court accepted the findings recorded by the Tribunal saying that by the introduction of the Casablanca Conversion System no new machinery or plant was installed, but the introduction of the system amounted to fitting of improved version and the expenditure in that behalf was of revenue nature. The High Court observed that certain parts of the machinery

had worn-out, they needed replacement, and when it was found that the old type of replacement parts were not available in the market, the assessee had to introduce the Casablanca Conversion System. This finding was accepted by this Court in the above judgment. In our view, the said judgment has no application with the facts of the present case. At the outset, we may state that replacement generally may not fall under the expression "current repairs" but, in certain cases, where the old parts were not available in the market or where the old parts had worked for 50 to 60 years, replacement can, in such cases of exception, fall within the expression "current repairs". In *Mahalakshmi Textile Mills case* [1967] 3 SCR 957 the finding recorded by the Tribunal and the High Court was that old type of replacement parts were not available in the market and, therefore, the expenditure came within the expression "current repairs". That is not the case before us, hence, the said judgment has no application to the facts of the present case. Moreover, the judgment of this Court in *Mahalakshmi Textile Mills* [1967] 3 SCR 957 has not defined the word "asset" to mean the entire production system in the textile mill. In the said judgment, it is nowhere stated that the entire textile mill is one single asset and that it represents one single integrated process."

18. In ***Sri Mangayarkarsai Mills Pvt. Ltd.*** (supra) the Supreme Court rendered beautiful analysis of ***Saravana Spinning Mills (P) Ltd.*** (supra) and the following passage in this behalf needs to be reproduced:-

> "Moving on to the issue of `current repairs' under Section 31 of the Act, the decision of this Court in CIT v. Saravana Spinning Mills (P) Ltd. (supra) is again relevant. This Court has laid down that in order to determine whether a particular expenditure amounts to `current repairs' the test is "whether the expenditure is incurred to `preserve and maintain' an already existing

asset and not to bring a new asset into existence or to obtain a new advantage. For `current repairs' determination, whether expenditure is revenue or capital is not the proper test." It is our opinion that the entire textile mill machinery cannot be regarded as a single asset, replacement of parts of which can be considered to be for mere purpose of `preserving or maintaining' this asset. All machines put together constitute the production process and each separate machine is an independent entity. Replacement of such an old machine with a new one would constitute the bringing into existence of a new asset in place of the old one and not repair of the old and existing machine. Also, a new asset in a textile mill is not only for temporary use. Rather it gives the purchaser an enduring benefit of better and more efficient production over a period of time. Thus, replacement of assets as in the instant case cannot amount to `current repairs'. The decision in Saravana Mills (supra) case clearly mentions that replacement of a derelict ring frame by a new one does not amount to `current repairs'. Further in Ballimal Naval Kishore (supra) this Court has held that a new asset or new/different advantage cannot amount to `current repairs', which has been subsequently approved in the Saravana Mills (supra) case. For these reasons, the expenditure made by the assessee cannot be allowed as a deduction under Section 31 of the Act. The judgment of this Court in the Saravana Mills (supra) case mentions two exceptions in which replacement could amount to current repairs, namely:

> "Where old parts are not available in the market (as seen in the case of CIT v. Mahalakshmi Textile Mills Ltd., AIR 1968 SC 101, or
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> Where old parts have worked for 50-60 years."

19. In the case at hand the facts were that the assessee was engaged in the manufacture and sale of cotton yarn. During the assessment year

1995-96 it had claimed an amount of Rs.61,28,150/- being the expenditure incurred on replacement of machinery, as revenue expenditure. According to the assessee, this expenditure was merely explained on replacement of spare parts in the spinning mill system and therefore, amounted to revenue expenditure deductible under Section 37 of the Act or 'current repairs' deductible under Section 31 of the Act. The assessee's contention was negatived in the light of the principle stated in ***Saravana Spinning Mills (P) Ltd.*** (supra) in the following manner:-

> "In the instant case, the assessee has not claimed any of the above stated exceptions. The Saravana Mills (supra) case also restricts the scope of `current repairs' to repairs made to machinery, plant and/or furniture. In this case, replacement of machine can at best amount to a repair made to the process of manufacture of yarn. Further this Court has also observed in Saravana Mills (supra) case that if replacement was held to be `current repair' in such cases, Section 31(i) will be completely redundant and absurdity will creep in because repair implies existence of a part of the machine which has malfunctioned, which is impossible in the case of such replacement. Thus, this replacement expenditure cannot be said to be `current repairs' after the decision in the Saravana Mills (supra) case.
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> Given that Section 31 of the Act is not applicable to the said expenditure of the assessee, the next issue is whether it can be considered `revenue expenditure' of the nature envisaged under Section 37 of the Act. The Saravana Mills (supra) case holds that expenditure is deductible under Section 37 only if it (a) is not deductible under Sections 30-36, (b) is of a revenue

> nature, (c) is incurred during the current accounting year and (d) is incurred wholly and exclusively for the purpose of the business. We are satisfied that the assessees' expenditure satisfies requirements (a), (c) and (d) as stated above. The dispute is with respect to the nature of expenditure, that is, whether it is revenue or capital in nature.
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> We are of the opinion that the expenditure of the assessee in this case is capital in nature and there is sufficient judicial precedent to support this view. In the case of Travancore Cochin Chemicals Ltd. v. CIT [1997] 2 SCC 20 this Court held that expenditure is of a capital nature when it amounts to an enduring advantage for the business and repair is different from bringing a new asset for the business. Further, in Lakshmiji Sugar Mills (P) Co. v. CIT AIR 1972 SC 159 it has been held by this Court that bringing into existence a new asset or an enduring benefit for the assessee amounts to capital expenditure. We have already explained why replacement, in this case, amounts to bringing into existence a new asset and also an enduring benefit for the assessee. It is clear then that expenditure of the assessee here is not of a revenue nature and thus, cannot be claimed as a deduction under Section 37 of the Act."

20. When we apply these tests to the facts of the present case, according to us, the answer is always, namely, the expenditure in question incurred is capital in nature and cannot be treated as on account of 'current repairs'. It has come on record that the machine in question which was purchased in the year 1981 had broken down completely. It remained idle from 5th December, 1991. The negotiations for reconditioning and repair were held with HMT Limited as a result of

which purchase order dated 20th June, 1992 was placed with HMT Limited. Total reconditioning and overhauling of the machinery was undertaken. The machinery had, thus, outlived its utility and huge expenditure was incurred by replacing many vital parts in order to make the same functional. Expenditure was of such a nature that it brought into existence altogether new machinery. In any case, the expenditure was for the purpose of securing a benefit of enduring nature. Even if technically new asset had not come into existence or the capacity of the overhauled machine after reconditioning was not enhanced, fact remains that after prolonged use this machinery was lying idle in a broken down condition, totally unfit for production. Therefore, by subsequent reconditioning carried out had resulted in imparting useful life to and hitherto old and unfit machinery, thus, resulting in a benefit of enduring nature. This benefit of enduring nature would be very much in capital field. In so far as the alternate submission of the assessee is concerned, that also does not cut any ice.

21. Learned senior counsel appearing for the assessee had tried to bring the case within the exception enumerated by the Supreme Court in ***Saravana Spinning Mills Pvt. Ltd.*** (supra) by arguing that replacement of plant and machinery which was put to continuous

use for decades can be treated as 'current repairs'. However, as noted above, this exception is stipulated in ***Saravana Mills***'s case (supra) in the following manner:-

> "where the old parts are not available in the market (as is seen in the case of ***CIT* v. *Mahalakshmi Textile Mills Ltd.*** AIR 1968 SC 101) or where the old parts have worked for 50-60 years"

22. No such case is made out or even was pleaded by the assessee before the Assessing Officer or even before CIT(A) or ITAT. It was not the case of the assessee that old parts were not available in the market. Admittedly, old parts have not worked for 50-60 years in the present case. Therefore, case would not be covered by this exception carved out by the Supreme Court in ***Saravana Spinning Mills Pvt. Ltd.*** (supra). In ***Saravana Spinning Mills Pvt. Ltd.*** (supra) itself the Supreme Court had distinguished ***Mahalakshmi Textile Mills Ltd.*** (supra), which has already been taken note of above. As noted therein, in ***Mahalakshmi Textile Mills Ltd.*** (supra) a specific finding was recorded that old type of spare parts were not available in the market and therefore, expenditure came within the exception of "current repairs" [the Supreme Court observed in ***Saravana Spinning Mills Pvt. Ltd.*** (supra) that that it was not the position in ***Saravana Spinning Mills Pvt. Ltd.*** (supra)]. Same

situation prevails here as well. We, thus, answer the questions in favour of the Revenue and thereby dismiss this appeal.

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23. These appeals relate to assessment years 2005-06 and 2006-07. Here again expenditure claimed on account of 'current repairs' was claimed as revenue in nature. Though the Assessing Officer treated the expenditure on repairs of plant and machinery as capital in nature, the CIT(A) held otherwise and view of CIT(A) has been upheld by the ITAT.

24. We may point out that the expenditure incurred in these years to the tune of Rs.39,18,342/- and 36,18,112/- was not on account of reconditioning of a particular machine as was the case in the assessment year 1994-95 dealt with above. Another distinguishing feature, which is material, is that expenditure was not incurred on one particular machine as happened in the assessment year 1994-95. In these years the assessee had incurred the expenditure on repairs of a number of machines and the aforesaid amounts were paid to various agencies from time to time. The expenditure consisted of the following:-

(i) Dismantling, cleaning and inspection of various parts.

(ii) Repair and replacement of worn out parts

(iii) Geometrical alignments of machines

(iv) Painting of machines

(v) Overhauling and repair of power transmission unit.

(vi) Replacement of electronic panel.

25. It is also pertinent to mention that deduction in respect of similar nature of expenditure were claimed by the assessee from 1995-96 onward. In respect of assessment year 1995-96, the Assessing Officer had disallowed following the order in respect of 1994-95. However, deduction was allowed by the CIT(A), which was upheld by the ITAT. The expenditure qua 1994-95 was distinguished in the following manner by the ITAT while passing the orders in respect of the assessment year 1994-95:-

> "We find that the facts in the present years are distinguishable from the facts that were before the Tribunal in the assessment year 1994-95. In that year the assessee repaired the machinery which were completely broken down and lying unutilized since the year ending on 31/03/1992. The same were renewed in the assessment year 1994-95 relevant to the year ending on 31/03/1994. In these circumstances, the Tribunal held that the machine had become unfit for production and by subsequent reconditioning carried out resulted in imparting useful life to an old and unfit machine. Thus, resulting in a benefit of enduring nature. In the years under appeal, we find that no material has been brought on record by the Revenue to show that even in a single case that the machines were broken down and lying idle from an earlier period, which were put to repairs during the years under consideration. The Ld. counsel for the

> assessee submitted that the accuracy of the machinery had gone down and, therefore, the machine required repair. Thus, the decision of the assessment year 1994-95 cannot be applied to the present years under appeal. In the above facts and circumstances of the case we are of the considered opinion that current repairs denotes repairs which are attended to when the need for them arises from the businessman's viewpoint and which are not allowed to fall into arrears or to be accumulated. The amount or time involved in the repairs is not a relevant factor while deciding whether the repairs qualify as current repairs. The expression "repairs" presupposes certain injury or partial destruction. Repair is restoration for renewal or replacement of subsidiary parts wholly or partly. Ordinarily, the insertion in a machine of new parts for old and worn out parts in the nature of current repairs or revenue expenditure, even if the old parts are required to be replaced after a long time. The mere fact that the repairs result in an improvement is not enough to take the repairs out of the category of current repairs. The old principle invoking the test of improvement has to be applied with discernment in the present age when the march of technology and the unending fabrication of new materials and products make even current repairs, primarily, so called yield improvement in varying degrees. Therefore, we are of the view that the expenditure incurred by the assessee on repairs of machinery in the present years under appeal is a revenue expenditure allowable for deduction to the assessee. We, therefore, in view of the facts of the case in each of the assessment year under consideration, confirm the orders of the CIT(A) and dismiss the ground of appeal of the Revenue for each of the five assessment years under consideration."

26. Significantly, no appeal was preferred by the Revenue against that order. The position remained the same till 2004-05, i.e., from the assessment year 1995-96 to the assessment year 2004-05. Similar

expenses were allowed by the ITAT as revenue in nature and all these orders were accepted by the Department. However, it is only in respect of 2005-06 and 2006-07 present appeals are filed. From the aforesaid facts we are of the opinion that not only the expenditure incurred on repairs is on account of current repairs for which deduction would be admissible under Section 31(1) of the Act, it is not capital expenditure but revenue expenditure incurred for business purposes which will qualify as deduction under Section 37 of the Act as well. Therefore, no substantial question of law arises and these appeals are accordingly dismissed.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JUNE 03, 2011
HP.