IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI R.C SHARMA (ACCOUNTANT MEMBER) AND

SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No. 6179 to 6182/MUM/2013

Assessment Year: 2007-08 to 2010-11

M/s Lilac Medicare Pvt. Ltd., 8, Sungold, Mahakali Caves Road, 303 Shere-e Punjab, Andheri West Mumbai-400093.	Vs.	ACIT- 8(3)(OSD), Mumbai

PAN No. AAACL3709M

(Appellant)	**(Respondent)**

Assessee By : Ms. Aarti Visanji and Shri Shalin S. Divatia

Revenue By : Shri A. Ramachandran

Date of Hearing : 03/11/2016

Date of pronouncement: 23/11/2016

O R D ER

PER RAVISH SOOD, JUDICIAL MEMBER :

The present appeals filed by the assessee for assessment years 2007-08to 2010-11 involving a common issue are directed against the respective orders passed by

CIT(A)-17, Mumbai, which in turn have arisen from the orders passed by the Assessing Officer (in short 'A.O') under section 143(3) of the Income Tax Act, 1961 (in short 'Act').

2. The Grounds of appeal raised by the assessee in all the four years pertain to certain common issues. The Grounds of appeal raised by the assessee in its appeal for the assessment year 2007-08, marked as ITA NO. 6179/Mum/2013, read as under:-

(A). A.Y. 2007-08:

"1. TheLd. CIT(Appeals)-17 erred in confirming the addition on account of disallowance of depreciation of Rs. 13,10,650/- on plant and machinery belonging to the appellant company and installed at customers premises for the business of the assessee.

2. The Ld. CIT(Appeals)-17 erred in concluding that the appellant was unable to adduce any evidence to show that the machines were part and parcel of its block of assets, inspite of the fact that:

i). The machines in question were forming part of the annexures to fixed assets annexed with the tax audit report and submitted before the LearnedA.O.

ii). Details of additions made to fixed assets given to the Learned A.Ovide letter dated 10th August, 2009.

3. The appellant craves leave to add, alter or amend any of the Grounds of appeal and submit a detailed statement of facts and case laws relied upon at the time of the hearing."

2. The brief facts of the case are that the assessee company was inter alia engaged in the business of trading in diagnostic machines, as well as supplying of reagents (i.e consumables) used in running of the said machines. The assessee filed its return of

income as on 30.10.2007 declaring total income of Rs. 1,36,15,260/-, which was processed as such under section 143(1) of the 'Act'. The case of the assessee was taken up for scrutiny proceeding, in the course of which the A.O observing that the assessee had claimed depreciation in respect of certain diagnostic machines which though were owned by it but were installed at the customers site, coupled with the facts that (a) letting out of machinery was not the business of the assessee; (b)no rental was charged by the assessee and thus its case could not be compared with a case of operating lease, and; (c) diagnostic machines were being used for the business of the third parties, thus being of the view that the assessee had failed to satisfy the requisite condition as regards user of the machinery for the purpose of the business or profession as contemplated under Sec. 32(1) of the 'Act', therefore disallowed depreciation of Rs. 13,10,650/-relatable to such diagnostic machines. The A.O thereafter deliberating on certain other issues assessed the income of the assesseeat Rs. 1,49,58,940/-.

3. The assessee being aggrieved with the disallowance of depreciation of Rs. 13,10,650/-(supra)carried the matter in appeal before the CIT(A). That during the course of the appellate proceedings the CIT(A) called for a remand report from the A.O, and though did find favor with the contention of the assessee that the diagnostic machines were supplied to the customers, i.e the diagnostic laboratories or the hospitals on rental/reagents basis, but observing that as neither the details of additions to plant and machinery which were installed at the customers site on reagents/rental basisdid emerge from the records, nor any evidence was furnished by the assessee to fortify its contention that the diagnostic machines formed part of its 'block of assets', therefore in the backdrop of the said factual observations so recorded by him,being of the view that the diagnostic machines which were installed at the customers site on rental/reagent basis were part of the 'Stock in trade' of the assessee, and as such no depreciation on the same could be allowed, thus dismissed the appeal of the assessee.

4. The assessee had before us assailed the order of the CIT(A) sustaining the disallowance of depreciation so carried out by the A.O. The Ld. Authorized representative for the assessee (for short 'A.R') vehemently opposing the observations of the lower authorities, therein averred that both the CIT(A) and the A.O while drawing adverse inferences in the hands of the assessee company had failed to appreciate the assesses entitlement towards claim of depreciation in the backdrop of its very nature of business and complete disregard of the material available on record. The Ld. A.R dispelling the observations of the lower authorities,therein took us through the relevant pages of its 'Paper book' (for short 'APB'), and submitted that the assessee company only after satisfying the requisite conditions contemplated u/s 32(1) of the 'Act' had raised its claim towards the statutory entitlement of depreciation in its return of income. That on the other hand the Ld. Departmental representative (for short 'D.R') heavily relied on the orders of the lower authorities and submitted that as the appeal of the assessee lacked any merit, therefore the order of the CIT(A) be sustained and the appeal of the assessee be dismissed.

5. We have considered the rival submissions of either side and perused the relevant material on record, including the orders of the authorities below and find that the sole issue involved in the present appeal lies in a narrow compass, i.e the entitlement of the assessee towards claim of depreciation on diagnostic machines owned by it, but installed at its customers site. We are of the considered view that for resolving the controversy as regards the entitlement of the assessee towards claim of depreciation on diagnostic machines as claimed in the return of income, which had been dislodged both by the A.O as well as the CIT(A) for multiple reasons, it would be relevant to first advert to and briefly cull out the nature of business of the assessee company, as the same to our understanding will have a strong bearing on the adjudication of the issue under consideration and justifiably dispel the conflicting views.

5.1 The assessee company is engaged in the business of sale of diagnostic machines/instruments as well as the reagents (i.e consumables) used in running of the said machines. The customers of the assessee are either the stand alone pathology laboratories or the hospitals with such inhouse laboratories, which carry out the diagnosis of a medical disease by subjecting the patients sample with the use of reagents in the diagnostic machines/instruments. The modus operandi adopted by the assessee for running its businessof trading in diagnostic machines and reagents, which is commonly followed in the trade line of diagnostic industry, can briefly be culled out as under:-

(i). Outright sale of diagnostic machine by the assessee to the customer who thereafter being the absolute owner of the same uses it with the liberty to purchase reagents from any party of his choice.

(ii). Installation of the diagnostic machine ownedby the assessee at the premises of the customer, though for zero rental and zero deposit, but subject to a conditional agreement that reagents to be used for running of the said diagnostic machine by the customer will be purchased exclusively from the assessee. In such a situation,though the ownership of the diagnostic machine and the responsibility for maintaining the same continues to remain vested with the assessee, however the customer remains under an obligation to purchase the reagents used in running of the diagnostic machine only from the assessee, i.e to the exclusion of any third party supplier.

The Ld. A.R in order to fortify her contention that the agreements executed with the customers at whose site the diagnostic machines owned by the assessee were installed at zero rental, subject to the condition that the exclusive purchase of the reagents used in running of the said machines were to be carried out by the said customers only from the assessee, coupled with the fact that suchcustomers had not claimed any

depreciation on such machines, had therein drawn our attention to the relevant pages of the 'APB', which we find are undisputedly the documents forming part of the records of the lower authorities.

5.2 We are of the considered view that in light of the nature of the business of the assessee as stands gathered from a perusal of the relevant pages of the 'APB', the conditional deployment of the diagnostic machines owned by the assessee, at the customers site, on the basis of agreements contemplating a strict stipulation that the customers shall remain under an obligation to exclusively purchase the reagents used in running of the said diagnostic machines from the assessee,is a purposive, conscious and intentional modus operandi adopted by the assessee to boost the sales of the reagents, which can safely be characterized as a strategic approach of the assessee prompted by business prudence in the very interest of its business.The Ld. A.R in order to fortify her contention that the diagnostic machines in the normal course of the business of the assessee, with the intent to boost the sale of reagents were strategically deployed at the customers site on zero rental and zero deposit basis, in lieu whereof the customer remained under an obligation not only to carry out exclusive purchase of the reagents from the assessee, but also remained committed to a minimum guaranteed purchases from the assessee during the period of the agreement, therein drew our attention to Page 73 of the 'APB', which is an annexure forming part of one of the agreement executed by the assessee with a customer during the year under consideration. It was submitted by the Ld. A.R that in the backdrop of such a strategical arrangement carried out in the course of and in very interest of its business, the test of user for business purposes of such diagnostic machines so installed at the customers site, thus stood satisfied beyond any scope of doubt. We have given a thoughtful consideration to the facts of the case and perused the material placed before us, andare persuaded to be in agreement with the contention of the Ld. A.R that the installation of the diagnostic machines owned by the assessee at the customers site, subject to the condition that the

purchase of the reagents shall be carried out exclusively from the assessee, can safely and inescapably be held to be the business of the assessee, and the observations to the contrary so drawn by the lower authorities on the said issueare misconceived and had rightly been dispelled by the Ld. A.R before us.

5.3 We are further unable to persuade ourselves to be in agreement with the observations of the CIT(A) that the assessee had not placed on record any details as regards the plant and machinery which had been given to the customers on reagents/rental basis, nor had adduced any evidence that the diagnostic machines under consideration did form part and parcel of its 'Block of assets'. We are of theconsidered view that the CIT(A) on the basis of misconceived facts, had thus erroneously held that diagnostics machines which were installed at the customers site on reagent rental contract basis did form part of the'Stock in trade' of the tradable diagnostic machines lying with the assessee.That during the course of hearing of the appeal the Ld. A.R dispelling the aforesaid observations of the CIT(A),therein submitted that the diagnostic machines of Rs. 52,85,721/- which were put to such use as on 01.04.2006, were purchased by the assessee during the preceding yearand necessary adjustment as regards reduction of the same from the 'Op. Stock' as on 01.04.2006 stood duly reflected in Schedule 10 forming part of the 'P& loss a/c' for the year under consideration, and in order to fortify his contention drew our attention to Page 13 of the 'APB'. The Ld. A.R further taking us to Page 10 of the 'APB', which is a schedule of the 'Fixed assets' forming part of the 'Balance sheet' as on 31.03.2007, marked as 'Schedule 5', therein submitted that diagnostic machines of Rs. 52,85,721/-(supra)formed part of the additions to the 'Fixed assets' reflected at Rs.1,15,79,767/- under the head 'Plant & Machinery' in the said schedule. The Ld. A.R further to support his aforesaid factual contention and remove any scope of doubt, took us to Annexure 'B' (Additions to the 'Fixed assets') which therein revealed that the addition of Rs. 52,85,721/-(supra) to the 'Plant & Machinery' as on 01.04.2006, did form part of the

total additions of Rs. 1,15,79,767/-(supra) reflected in 'Schedule 5' (supra). Thus to be brief and explicit, the Ld. A.R well demonstrated before us that the complete details as regards the diagnostic machines of Rs. 52,85,721/-(supra) formed part of the 'Block of assets' of the assessee, and had been installed at the customers sites on reagent sale basis during the year under consideration, were very much available before the lower authorities. It was thus submitted by the Ld. A.R that in the backdrop of the aforesaid factual position, the observations of the CIT(A) that the assessee had failed to furnish details and adduce any evidence in support of his contention that the diagnostic machines installed at the customers site were part of its 'Block of assets', were proved to be blatantly contrary to the material available on record, and the A.O had most whimsicallyconcluded that the same were part of the 'Stock in trade' of the assessee. It was thus submitted by the Ld. A.R that as the observations of the CIT(A) were absolutely perverse and contrary to the material available on record, therefore the same thus could not be sustained as such, and were liable to be set aside. The Ld. D.R was however unable to dislodge the aforesaid contention of the assessee, which we find were well founded and supported by the relevant pages of the 'APB' to which our attention was drawn. We have given a thoughtful consideration to the contention of the parties and are of the considered view that in the backdrop of the aforesaid facts as had emerged from the material available on the record of the lower authorities, the observations of the CIT(A) that the assessee had not furnished any details of the additions to the plant and machinery which were installed at the customers site on reagent rental contract basis, nor adduced any evidence that the diagnostic machines installed at the customers site formed part of the 'Block of assets' of the assessee, being absolutely contrary and in complete disregard of the material available on record, therefore cannot be sustained and are herein set aside. Thus in light of our aforesaid observations, we herein vacate the consequential finding of the CIT(A) which had so emerged on the basis of his aforesaid misconceived and ill founded observationsthat the diagnostic machines

installed by the assessee at the customers site under the reagent rental contracts were not from the assesses 'Block of assets', but formed part of the latters 'Stock in trade'. We thus being of the view that the installation of the diagnostic machines owned by the assessee and forming part of its 'Block of assets' at the customers site, being a part of the business of the assessee, and rather as a matter of fact a modus operandi adopted by the assessee to boost its sales of reagents, therefore the latter being found to have duly satisfied the requisite conditions contemplated u/s 32(1) of the 'Act', is thus entitled to deprecation on the said diagnostic machines. We thus in light of our aforesaid observations set aside the order of the CIT(A) and allow the appeal of the assessee.

(II). A.Y. 2008-09:

The Grounds of appeal raised by the assessee in its appeal for the assessment year 2008-09, marked as ITA NO. 6180/Mum/2013, read as under:-

"1.The Learned CIT(Appeals)-17 erred in confirming the addition on account of disallowance of depreciation of Rs. 12,52,731/- on plant and machinery belonging to the appellant company and installed at customers premises for the business of the assessee.

2. The Learned CIT(A)-17 erred in concluding that the appellant was unable to adduce any evidence to show that the machines were part and parcel of its block of assets, inspite of the fact that:

i). The machines in question were forming part of the annexures to fixed assets annexed with the tax audit report and submitted before the LearnedA.O.

3. The appellant craves leave to add, alter or amend any of the grounds of appeal and submit a detailed statement of facts and case laws relied upon at the time of the hearing."

6. That adverting to the 'Ground of appeal No(s).1 to 3', the Ld. A.R. had brought to our notice that the identical issue was involved in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, which factual position had been admitted by the Ld. D.R. Thus in light of the aforesaid facts, we adjudicate the present issue in terms of our order passed in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, and thus on the same terms and reasoning adopted by us, therein allow the aforesaid grounds of appeal.

6.1. That the appeal of the assessee for the A.Y 2008-09, marked as ITA No. 6180/Mum/2013 is thus allowed in light of our aforesaid observations.

(III). <u>A.Y. 2009-10</u> :

The Grounds of appeal raised by the assessee in its appeal for the assessment year 2009-10, marked as ITA NO. 6181/Mum/2013, read as under:-

"1.The Learned CIT(Appeals)-17 erred in confirming the addition on account of disallowance of depreciation of Rs. 10,64,821/- on plant and machinery belonging to the appellant company and installed at customers premises for the business of the assessee.

2. The Ld. CIT(A)-17 erred in concluding that the appellant was unable to adduce any evidence to show that the machines were part and parcel of its block of assets, inspite of the fact that:

i). The machines were forming part of the annexures to fixed assets annexed with the tax audit report and submitted before the LearnedA.O.

3. The appellant craves leave to add, alter or amend any of the Grounds of appeal and submit a detailed statement of facts and case laws relied upon at the time of the hearing."

7. That adverting to the 'Ground of appeal No(s).1 to 3', the Ld. A.R. had brought to our notice that the identical issue was involved in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, which factual position had been admitted by the Ld. D.R. Thus in light of the aforesaid facts, we adjudicate the present issue in terms of our order passed in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, and thus on the same terms and reasoning adopted by us, therein allow the aforesaid grounds of appeal.

7.1. That the appeal of the assessee for the A.Y 2009-10, marked as ITA No. 6181/Mum/2013 is thus allowed in light of our aforesaid observations.

(IV). <u>A.Y. 2010-11</u>

The Grounds of appeal raised by the assessee in its appeal for the assessment year 2010-11, marked as ITA NO. 6182/Mum/2013, read as under:-

"1.The Learned CIT(Appeals)-17 erred in confirming the addition on account of disallowance of depreciation of Rs. 9,05,098/- on plant and machinery belonging to the appellant company and installed at customers premises for the business of the assessee.

2. The Learned CIT(A)-17 erred in concluding that the appellant was unable to adduce any evidence to show that the machines were part and parcel of its block of assets, inspite of the fact that:

i). The machines were forming part of the annexures to fixed assets annexed with the tax audit report and submitted before the LearnedA.O.

3. The appellant craves leave to add, alter or amend any of the Grounds of appeal and submit a detailed statement of facts and case laws relied upon at the time of the hearing."

8. That adverting to the 'Ground of appeal No(s).1 to 3', the Ld. A.R. had brought to our notice that the identical issue was involved in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, which factual position had been admitted by the Ld. D.R. Thus in light of the aforesaid facts, we adjudicate the present issue in terms of our order passed in the appeal of the assessee for A.Y. 2007-08, marked as ITA No. 6179/Mum/2013, and thus on the same terms and reasoning adopted by us, therein allow the aforesaid grounds of appeal.

8.1. That the appeal of the assessee for the A.Y 2010-11, marked as ITA No. 6182/Mum/2011 is thus allowed in light of our aforesaid observations.

In the result all the four appeals of the assessee company for A.Y. 2007-08 to 2010-11, marked as ITA No. 6179-6182/Mum/2013, are allowed, in light of our aforesaid observations.

Order pronounced in the open court on 23/11/2016.

Sd/-	**Sd/-**
(R.C. SHARMA)	**(RAVISH SOOD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date : 23rd November, 2016

Copy to :
1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, "I" Bench, Mumbai
6) Guard file

By Order
Dy./Asstt. Registrar
I.T.A.T, Mumbai