

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एफ' ,मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'F' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री जॉसन पी. बोज, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Jason P. Boaz, Accountant Member**

**ITA No.4213/Mum/2014  
Assessment Year: 2010-11**

Usha Garments Mfg. Company P. Ltd. Plot .13, WICEL, MIDC, Andheri (East), Mumbai-400093	<b>बनाम/ Vs.</b>	DCIT, Ward-8(3), Aayakar Bhavan, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No.AAACU1397H		

निर्धारिती की ओर से / Assessee by	Shri Pankaj R. Toprani & Ms. Keyuri Desai
राजस्व की ओर से / Revenue by	Shri Mukundraaj M. Chate

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>08/03/2016</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>11/03/2016</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

This assessee is aggrieved by the impugned order dated 30/04/2014 of the ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to upholding the disallowance of entire depreciation of Rs.23,11,087/-, claimed on factory building and rented premises u/s. 32 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. During hearing the crux of argument advanced by Shri Pankaj R. Toprani alongwith Ms. Keyuri Desai was that details of property and property-wise depreciation was duly filed before the Assessing Officer and the assessee is manufacturing garments. The observation made in the assessment order that no details were furnished is in fact wrong for which our attention was invited to paper book page 31. On the other hand, the ld. AR, Shri Mukundraaj M. Chate defended the conclusion arrived at in the impugned order.

2.1 We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee, a private limited company, at the relevant time was engaged in manufacturing and export of readymade garments, declared income of Rs.2,46,42,031/- on 6.10.2010 in the return. The assessee rented out the premises and also paid municipal taxes. The assessee claimed depreciation u/s 32 of the Act on factory building and also the rented premises which

was disallowed. On appeal, the ld. Commissioner of Income Tax (Appeals) affirmed the stand of the Assessing Officer. The assessee is in further appeal before this Tribunal. It is noted that while adjudicating the appeal, the ld. Commissioner of Income Tax (Appeals) considered the submissions of the assessee and also sought remand report from the Assessing Officer. However, the claim of depreciation was disallowed. It was purely on the plea that property-wise details of depreciation were not filed by the assessee. However, from the paper book, filed before this Tribunal, it is noticed that the details were duly furnished before the Assessing Officer and the property-wise depreciation chart was duly filed before the ld. Commissioner of Income Tax (Appeals). Without going into much deliberation, we are of the view that the claim of the assessee cannot be summarily rejected, therefore, this issue is remanded back to the file of the ld. Assessing Officer to examine the claim of the assessee and decide in accordance with law. The assessee be given opportunity of being heard with further liberty to furnish evidence, if any, in support of its claim. This ground is allowed for statistical purpose only.

3. The next ground pertains to upholding the disallowance of Rs.5,42,580/- made u/s. 14A of the Act. The crux of argument advanced on behalf of the assessee is that the assessee earned certain exempt income and the ld. Assessing Officer wrongly applied Rule 8D. It was contended that no borrowed funds were utilized by the assessee for making the investment for which our attention was invited to page 8 of the

paper book. Reliance was placed upon the decision of Hon'ble Punjab & Haryana High Court in CIT v. Abhishek Industries Ltd. [2016] 380 ITR 652. Plea was also raised that the ld. Assessing Officer has not recorded satisfaction while making the disallowance. On the other hand, the ld. DR defended the disallowance made by the Assessing Officer and confirmed by the ld. Commissioner of Income Tax (Appeals).

3.1 We have considered the rival submissions and perused the material available on record. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsels, if kept in juxtaposition and analyzed, it is noticed that even the assessee has accepted that his claim is wrong, however, it is noticed that the assessee made investment of Rs.3,06,87,774/- and Rs.3,06,43,545/- as on 31.3.2009 and 31.3.2010 respectively. The assessee received dividend of Rs.2,32,581/- which was claimed exempt u/s. 10(34) of the Act. The assessee has not attributed any expenses which were carried out for the activity of investment for earning exempt income. No doubt the ld. Assessing Officer issued show cause notice and even the assessee itself made disallowance of Rs.1,53,328/- being 0.5% of the average investment. Considering the totality of facts, the disallowance upto Rs.1,53,328/- is confirmed. So far as non-recording of satisfaction is concerned, we find that satisfaction has been duly recorded for which a particular format has not been

prescribed. The ld. Assessing Officer was not satisfied with the claim of the assessee thereby he issued a show cause notice. However, so far as the remaining claim is concerned, the ld. Assessing Officer is directed to examine the claim of the assessee and decide in accordance with law. The assessee be given opportunity to substantiate its claim. Thus, this ground is partly allowed for statistical purposes.

4. Finally, the appeal of the assessee is partly allowed for statistical purpose.

This order was pronounced in the open court in the presence of the ld. representative from both sides at the conclusion of the hearing on 08/03/2016.

Sd/-  
(Jason P. Boaz)

Sd/-  
(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11/03/2016

SSL/नि.स.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai