

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

आयकर अपील सं./ITA No.2873/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2009-2010)

M/s JSW Cement Ltd., JSW Centre, Bandra Kurla Complex, Bandra(E), Mumbai-400051	Vs.	ITO, Ward-5(2)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCJ 6731 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rakesh Joshi

राजस्व की ओर से /Revenue by : Shri K.Mohandas

सुनवाई की तारीख / Date of Hearing : **08/02/2016**

घोषणा की तारीख/Date of Pronouncement **29/04/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A), Mumbai, for the assessment year 2009-2010, in the matter of order passed u/s.143(3) of the I.T.Act on the following grounds :-

1. "On the facts and in the circumstances of the case as well as in law, the Learned CIT(A) has erred in partly confirming the action of Assessing Officer in disallowing the depreciation on plant & machinery, without considering the facts and circumstances of the case."

2. "On the facts and in the circumstances of the case as well as in law, the Learned CIT(A) has erred in not considering the submission made by the appellant."

2. Rival contentions have been heard and record perused. Facts in brief are the assessee is engaged in the business of investment in shares and has shown income from long term capital gain, short term capital gain, dividend income and profit from deemed speculation transactions. The assessee filed its return of income declaring total loss at

Rs.18,80,17,177/-. During the course of assessment the AO disallowed assessee's claim of depreciation. By the impugned order the CIT(A) allowed part relief and for the balance the assessee is in further appeal before us.

3. We have considered rival contentions and found from the record that assessee has set up a Grinding Unit, construction of which has been completed over a period of three years and commenced commercial operation during the year under consideration for grinding of granulated blast furnace slag and producing Portland slag cement. For the said purpose, various parts and sections of the said Unit have been constructed/built and capitalized separately (this being more of technical matter and done mainly for the administrative convenience of the assessee). Hence, it is not a case where the individual assets have been purchased from outside and therefore could be recognized for a single invoice with narrated description. Most of the assets are plant building blocks which have been developed at site therefore have multiple components, erection expenses and allocable pre-operative expenses, complete details of which has been provided before the Id. AO and the same has been matched with corresponding invoices. However, the AO did not satisfy with assessee's explanation and declined entire claim of depreciation on the grinding unit. Reasons given by the AO for disallowance was as under :-

- i) *Bills not in assessee's name, but assets capitalized by assessee-Rs.1,68,62,690/-.*
- ii) *Certain bills where name of the assessee is not legible, the aggregate of such bills (4 in number) is Rs.10,96,632/-. The*

- assessee did not produce original bills and its name is not legible in the photocopy produced.
- iii) In certain bills, amount of the bills is much less than the amount capitalized by the assessee and no explanation has been given by the assessee in respect of this difference. The aggregate of such difference is Rs.17,85,432/-.
- iv) In respect of some bills (5 in number), the item description on the bills do not match with the description of the assets capitalized by the assessee. The aggregate amount in such bills is Rs.77,84,117/-. The assessee could not offer any plausible explanation.
- v) Certain assets aggregating in value Rs.52,77,101/-, have been capitalized by the assessee but till date no bills or any other evidence towards addition to fixed assets have been produced to support the claim that the assets were added to the block.

4. By the impugned order the CIT(A) allowed assessee's claim with respect to assets capitalized amounting to Rs.1.68 crores. With respect to balance amount for which depreciation was declined, we found that assessee has filed full details of addition to fixed assets where the AO alleged that item description on the bills do not match with the description of the assets amounting to Rs.77,84,117/-. We had verified every bills as placed on record, which are as under :-

M/s JSW Cement Ltd.					
A.Y.2009-10					
Details of addition to Fixed Assets where AO alleged that item description on the bills do not match with the description of the assets					
Sl. No	Assets No.	Supplier Name	Assets Description	Description on the Bill	Amount
1	47	Quantum Power Solutions	Main Receiving Substation	110 V 25 Amps FCBC Charger suitable for VRLA batteries along with a battery	5,42,694
2	47	Multicolor Projects (India) Limited	Main Receiving Substation	Supply & Fixing of Color Coated sheets	19,99,430
3	46	SSE Enterprises	Utility Lighting/Misc CemuliM077	Various electrical item purchases for utility section	7,14,900
4	70	Thermax	Bag House, Bag Filters	Bag Filter for VRM	39,61,000
5	-	JSPL	Feed Group Bin Vibrator CEMFGBV011	Steel Purchased for structure	5,66,093
			Total		77,84,117

5. We had also verified the respective bills placed on record. Accordingly, there is no justification for decline of claim of depreciation in respect of bills of Rs.77,84,117/-.

6. Looking to the nature of the assets being put in i.e. grinding unit, which had already been commenced commercial production, meaning thereby the entire investment has been made by the assessee and which has been put to use during the year under consideration. In the interest of justice, we restore balance disallowance to the file of AO for deciding afresh after giving one more opportunity to the assessee. We direct accordingly.

7. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 29/04/2016.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 29/04/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY
ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai