



आयकर अपीलिय अधिकरण "आई" न्यायपीठ मुंबई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**
श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष।
**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. : 4885/Mum/2014
(Assessment year: 2006-07)

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| Dy. Commissioner of Income Tax -8(1), Room No. 260A, 2 nd Floor, Aayakar Bhavan, M K Road, Mumbai -400 020 | Vs | यूरो प्रतीक इस्पात प्राइवेट लिमिटेड M/s Euro Pratik Ispat Private Limited, 4, Usha Niketan, Mahant, Vile Parle (East), Mumbai -400 057 स्थयी लेखा सं. PAN: AABCE 3210 E |
| अपीलार्थी (Appellant) | | प्रत्यर्थी (Respondent) |
| Appellant by | : | श्री प्रकाश पथाड़े Shri Prakash Pathade |
| Respondent by | : | कोई नहीं None |

सुनवाई की तारीख /Date of Hearing : 16-08-2016
घोषणा की तारीख /Date of Pronouncement : 16-08-2016

आदेश
ORDER

श्री अमित शुक्ला, न्या सः
PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the revenue against impugned order dated 23.05.2014, passed by Ld. CIT(Appeals) -16, Mumbai, in relation to the penalty proceedings under section 271(1)(c), for the assessment year 2006-07.

2. None appeared on behalf of the assessee.

At the outset, the Ld. DR admitted that, the Ld. CIT(A) has deleted the penalty on the ground that the Tribunal in the quantum proceedings had allowed the assessee's appeal and, therefore, penalty on same disallowance will not sustain.

3. After considering the aforesaid fact which is culled out from the impugned order, we find that penalty has been levied on the claim of “additional depreciation” of Rs.1,27,23,266/- on the plant and machinery, which as per the AO has been acquired before 31st March, 2005 though not put to use and the provision of section 32(1)(iia) relating to additional depreciation is allowable only in cases where new machinery are installed after 31st March, 2005. Assessee’s case was that though the machineries were shown as capital-work-in-progress as on 31.03.2005, but were put to use in this financial year and hence was included in the block of assets in the previous year, relevant to the assessment year 2006-07.

4. The Ld. CIT(A) in para 2.3 of the impugned order has noted that, now in the quantum appeal, the Tribunal vide order dated 02.04.2014 in ITA No.1682/Mum/2011 for the assessment year 2006-07 has held that, the assessee was entitled to claim additional deprecation @ 10%. In wake of the aforesaid fact that the issue of additional depreciation has been decided in favour of the assessee by the Tribunal in the quantum proceedings, we hold that the penalty levied on such a disallowance has no legs to stand, therefore, the order of the Ld. CIT(A) is affirmed and grounds raised by the revenue stands dismissed.

5. In the result, appeal of the revenue stands dismissed.

Order pronounced in the open court on 16th August, 2016

Sd/-

(रमित कोचर)

लेखा सदस्य

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

(AMIT SHUKLA)

JUDICIAL MEMBER

Mumbai, Date: 16th August, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) –16, Mumbai.
 - 4) The CIT–8, Mumbai.
 - 5) विभागीय प्रतिनिधि “आई”, आयकर अपीलीय अधिकरण, मुंबई/
The D.R. “I” Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS