

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1499 & 1500/Mds/2014

निर्धारण वर्ष / Assessment Years :2009-10 & 2010-11

&

आयकर अपील सं./ITA No.1485/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Fresh & Honest Café Ltd.,  
C/o Shri S. Sridhar, Advocate,  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar, Adyar,  
Chennai - 600 020.

v. The Deputy Commissioner of  
Income Tax,  
Company Circle II(1),  
Chennai - 600 020.

PAN : AAACF 1516 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. Milind Madhukar Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 09.03.2016

घोषणा की तारीख/Date of Pronouncement : 05.05.2016

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

These appeals of the assessee are directed against the different orders of the Commissioner of Income Tax (Appeals), Chennai, for the assessment years 2009-10, 2010-11 and 2011-12.

Since common issue arises for consideration in these appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee claimed additional depreciation under Section 32(1)(iia) of the Income-tax Act, 1961 (in short 'the Act') in respect of the new plant and machinery installed and used for manufacturing activity. Since the machinery was used for less than 180 days, the Assessing Officer allowed 10% of the additional depreciation. The assessee claims the balance 10% of additional depreciation during the year under consideration. However, the Assessing Officer disallowed the claim of the assessee on the ground that there is no provision in the Income-tax Act for carry forward of balance 10% depreciation. Referring to the decision of this Bench of the Tribunal in M/s Automotive Coaches & Components Ltd. v. DCIT in I.T.A. No.1789/Mds/2014 dated 12.02.2016, the Ld.counsel submitted that on identical set of facts, this Tribunal by referring to the decision of Cochin Bench of this Tribunal in Apollo Tyres v. ACIT (2014) 64 SOT 203, directed the Assessing Officer to allow the remaining 10% additional

depreciation for the subsequent year. The Ld.counsel further submitted that the assessee has raised other grounds in the appeal. However, the same are not pressed.

3. We have heard Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative also. According to the Ld. D.R., there is no provision in the Income-tax Act to carry forward the balance. The additional depreciation under Section 32(1)(iia) of the Act has to be allowed at the rate of 20% provided the assessee used the machinery for more than 180 days. In this case, the assessee used the plant and machinery for less than 180 days. Therefore, the Assessing Officer has rightly restricted the additional depreciation at 10%. In the absence of any provision to carry forward to the subsequent year, the Assessing Officer disallowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the machinery was installed and used for manufacturing activity for less than 180 days. Therefore, the Assessing Officer allowed the additional depreciation at the rate of 10%. The question

arises for consideration is whether the assessee can claim the remaining 10% under Section 32(1)(iia) of the Act in the subsequent year? This issue was considered by this Tribunal in M/s Automotive Coaches & Components Ltd. (supra) and found that the assessee is entitled for remaining 10% additional depreciation during the subsequent year. In fact, this Tribunal observed as follows:-

"5. We have considered the rival submissions on either side and perused the relevant material available on record. Section 32(1)(iia) provides for additional depreciation at the rate of 20%. The Assessing Officer allowed 10% of additional depreciation in respect of the plant and machinery purchased during the year under consideration. The Assessing Officer found that the additions to fixed assets were made in the second half of the financial year, therefore, 50% of additional depreciation has been claimed. The balance 50% was carried forward in the next year. The Assessing Officer found that the additional depreciation is allowable only during the year in which the machinery was installed and used for business of the assessee. There is no provision in the Income-tax Act for carry forward of the additional depreciation to the subsequent assessment year. This issue was examined by the Cochin Bench of this Tribunal in Apollo Tyres Ltd. v. ACIT (supra). The Cochin Bench found that if additional depreciation could not be allowed at the rate of 20% during the year in which the machinery was installed, the balance 50% has to be allowed in the subsequent year. In fact, the Cochin Bench of this Tribunal has observed as follows:-

"9. We have considered the rival submissions on either side and also perused the material available on record. Section 32(1)(iia) reads as follows:

"32(1)(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided that no deduction shall be allowed in respect of

(A) Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B) Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(C) Any office appliances or road transport vehicles; or

(D) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year."

10. We have also carefully gone through the Second Proviso to section 32(1)(ii) of the Act, which reads as follows:

"Provided further that where an asset referred to clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia) as the case may be."

11. A bare reading of this section 32(1)(iia) clearly says that in case a new machinery or plant was acquired and installed after 31-03-2005 by an assessee, who is engaged in the business of manufacture or produce of article or thing, then, a sum equal to 20% of the actual cost of the machinery and plant shall be allowed as a deduction. It is not in dispute that the assessee has acquired and installed the machinery after 31-03-

2005. It is also not in dispute that the assessee is engaged in the manufacture of article or thing. Therefore, the assessee is eligible for additional depreciation which is equivalent to 20% of the actual cost of such machinery. The dispute is the year in which the depreciation has to be allowed. The assessee has already claimed 10% of the depreciation in the earlier assessment year since the machinery was used for less than 180 days and claiming the balance 10% in the year under consideration. Section 32(1)(iia) does not say that the year in which the additional depreciation has to be allowed. It simply says that the assessee is eligible for additional depreciation equal to 20% of the cost of the machinery provided the machinery or plant is acquired and installed after 31-03-2005. Proviso to section 32(1)(iia) says that if the machinery was acquired by the assessing during the previous year and has put to use for the purpose of business less than 180 days, the deduction shall be restricted to 50% of the amount calculated at the prescribed rate. Therefore, if the machinery is put to use in any particular year, the assessee is entitled for 50% of the prescribed rate of additional depreciation. The Income-tax Act is silent about the allowance of the balance 10% additional depreciation in the subsequent year. Taking advantage of this position, the assessee now claims that the year in which the machinery was put to use the assessee is entitled for 50% additional depreciation since the machinery was put to use for less than 180 days and the balance 50% shall be allowed in the next year since the eligibility of the assessee for claiming 20% of the additional depreciation cannot be denied by invoking Second Proviso to section 32(1)(ii) of the Act.

12. This issue was considered by the Delhi Bench of this Tribunal in the case of *Cosmo Films Ltd* (supra). The revenue has taken a similar ground as taken before this Tribunal that the assessee cannot carry forward the additional depreciation to be allowed in the subsequent assessment year. The Delhi Bench of this Tribunal after considering the provisions of section 32(1)(iia) and proviso to section 32(1)(ii) of the Act found that when there is no restriction in the Act to deny the benefit of balance 50%, the assessee is entitled for the balance additional depreciation in the subsequent assessment year. In fact, the Delhi Bench of this Tribunal has observed as follows at pages 641 and 642 of the ITD:

" Thus, the intention was not to deny the benefit to the assessee who have acquired or installed new machinery or plant. The second proviso to section 32(1)(ii) restricts the allowances only to 50% where the assets have been acquired and put to use for a period less than 180 days in the year of acquisition. This restriction is only on

the basis of period of use. There is no restriction that balance of one time incentive in the form of additional sum of depreciation shall not be available in the subsequent year. Section 32(2) provides for a carry forward set up of unabsorbed depreciation. This additional benefit in the form of additional allowance u/s 32(1)(iia) is one time benefit to encourage the industrialization and in view of the decision of Hon'ble Supreme Court in the case of *Bajaj Tempo Ltd. v. CIT* [1992] [196 ITR 188](#), the provisions related to it have to be construed reasonably, liberally and purposive to make the provision meaningful while granting the additional allowance. This additional benefit is to give impetus to industrialization and the basic intention and purpose of these provisions can be reasonably and liberally held that the assessee deserves to get the benefit in full when there is no restriction in the statute to deny the benefit of balance of 50% when the new machinery and plant were acquired and used for less than 180 days. One time benefit extended to assessee has been earned in the year of acquisition of new machinery and plant. It has been calculated @15% but restricted to 50% only on account of usage of these plant & machinery in the year of acquisition. In section 32(1)(iia), the expression used is "shall be allowed". Thus, the assessee had earned the benefit as soon as he had purchased the new machinery and plant in full but it is restricted to 50% in that particular year on account of period of usage. Such restrictions cannot divest the statutory right. Law does not prohibit that balance 50% will not be allowed in succeeding year. The extra depreciation allowable u/s 32(1)(iia) is an extra incentive which has been earned and calculated in the year of acquisition but restricted for that year to 50% on account of usage. The so earned incentive must be made available in the subsequent year. The overall deduction of depreciation u/s 32 shall definitely not exceed the total cost of machinery and plant. In view of this matter, we set aside the orders of the authorities below and direct to extend the benefit. We allow ground no.2 of the assessee's appeal. Since we have decided ground no.2 in favour of assessee, there is no need to decide the alternate claim raised in ground no.3. The same is dismissed."

13. This issue was also considered by another bench of this Tribunal at Delhi in *SIL Investment Ltd (supra)*. At page 233 of the TTTJ, the Tribunal has observed as follows:

"40. There is nothing on record to show that the directions given by the learned CIT(A) are not proper. The eligibility for deduction of

additional depreciation stands admitted, since 50 per cent thereof had already been allowed by the AO in the asst.yr.2005-06, i.e. the immediately preceding assessment year. Therefore, obviously, the balance 50 per cent of the deduction is to be allowed in the current year, i.e. asst. yr. 2006-07. The learned CIT(A) has merely directed the verification of the contentions of the assessee and to allow the balance additional depreciation after such factual verification. Accordingly, finding no merit therein, ground No.3 raised by the Department is rejected."

14. A similar view was taken by Mumbai Bench of this Tribunal in MITC Rolling Mills (P.) Ltd. (supra). In view of the above decisions of the co-ordinate benches of this Tribunal on identical set of facts this Tribunal is of the considered opinion that the balance 50% of the depreciation has to be allowed in the subsequent year, therefore, the orders of the lower authorities on this issue are set side and the assessing officer is directed to allow the claim of balance 50% additional depreciation in the year under consideration."

We have also carefully gone through the judgment of Karnataka High Court in Rittal India Pvt. Ltd. (supra). The Karnataka High Court, after extracting the provisions of Section 32(1)(iia) of the Act, found that beneficial legislation has to be interpreted liberally so as to benefit the assessee. Karnataka High Court has also found that the intention of the legislation is to allow additional benefit. The Karnataka High Court opined that the proviso would not restrain the assessee from claiming the balance of the benefit of additional depreciation in the subsequent assessment year. Accordingly, confirmed the order of the Bangalore Bench of this Tribunal. In fact, the Karnataka High Court has observed as follows:-

*"7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.*

*8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new*

*industrial undertaking, OF that it should be claimed in one year, have been done away by substituting clause (iia) with effect from 01.0.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause [ii] of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.*

*9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can. be claimed in one year, if plant and machinery is put to use for less than 180 days said financial year. ....very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed.*

*10. It has been consistently held by this Court, as well as the Apex Court, that beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act*

*is a one time benefit to encourage industrialization, and provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance. We are in full agreement with such observations made by the Tribunal."*

6. In view of the above, this Tribunal is of the considered opinion that the assessee is entitled for remaining 10% of the depreciation during the year under consideration. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to allow balance 50% of depreciation, namely, 10% of additional depreciation during the year under consideration."

5. In view of the above, this Tribunal is of the considered opinion that the assessee is eligible for remaining 10% additional depreciation under Section 32(1)(iia) of the Act. The orders of the lower authorities are set aside and the Assessing Officer is directed to allow the balance 50% depreciation, namely, 10% additional depreciation during the year under consideration.

6. The other grounds raised by the assessee are not pressed by the Ld.counsel for the assessee during the course of hearing. In fact, the Ld.counsel has made an endorsement in the file.

7. In view of the above, other grounds are dismissed as not pressed.

8. In the result, all the appeals of the Revenue are partly allowed.

Order pronounced on 5<sup>th</sup> May, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> May, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
4. आयकर आयुक्त/CIT-II, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.