

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**  
श्री आर.सी. शर्मा, लेखा सदस्य एवं  
श्री अमरजीत सिंह, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI R C SHARMA, ACCOUNTANT MEMBER  
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No. : 4318/Mum/2013**

(Assessment year: 2009-10)

ACIT -4(2), Room No. 642, 6 <sup>th</sup> Floor, Aayakar Bhavan, M K Road, Mumbai -400 020	<b>Vs</b>	Mega Fine Pharma Pvt Ltd, Sethna, 4 <sup>th</sup> Floor, 55 M K Road, Marine Lines, Mumbai -400 020 स्थयी लेखा सं.:PAN : <b>AAACM 6462 M</b>
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Airijv Jaikaran
Respondent by	:	Shri C V Jain

सुनवाई की तारीख /Date of Hearing : 02-11-2015

घोषणा की तारीख /Date of Pronouncement : 01-02-2016

**आदेश**  
**ORDER**

**आर.सी. शर्मा, ले. स.:**

**PER R C SHARMA, A.M.:**

This is an appeal filed by the revenue against the order of CIT(A) for the assessment year 2009-10.

2. In this appeal revenue is aggrieved by the action of the CIT(A) directing the AO to allow 100% depreciation of affluent treatment of plant and 80% of boiler as against normal rates allowed by the AO.

3. Rival contentions have been heard and record perused. The facts of the case are that the assessee had claimed depreciation @ 80% and 100% amounting to Rs. 1,16,49,642/- on the boiler and Rs.13,63,051/- on Effluent Treatment Plant. The assessee had also claimed additional depreciation @ 20% in the case of boiler. The assessee's submissions were not accepted by the AO. The AO held that the rates of depreciation for all blocks of assets are provided as per Rule 5 of the I.T. Rules. New Appendix-I provides

rates of depreciation from AY 2006-07 onwards. On perusal of this appendix, it is observed that the Effluent Treatment Plant does not form part of any block of asset on which 100% depreciation has been prescribed. Therefore, in such cases, as per AO depreciation should have been claimed at normal rate prescribed for plant and machinery. Similarly, on perusal of the appendix to Rule 5 for depreciation, it was observed by AO that 80% depreciation is allowed only on specialized boilers and not on normal boilers. The AO held that the assessee had not brought any evidence on record to prove that the assessee had installed specialized boilers.

4. By the impugned order CIT(A) directed the AO to allow assessee's claim of depreciation @ 100% of capital expenditure incurred for the purpose of R&D activity, after having following observation:

*"I have considered the facts of the case. The appellant incurred R&D expenditure amounting to Rs. 2,09,29,267/- being used for R & D, the appellant claimed 100% depreciation thereon. The AO held that the equipments on which capital expenditure was incurred were not used on R & D but were used for normal manufacturing activity and therefore, only normal rate of depreciation was allowable and not 100% as claimed by the appellant.*

*The appellant incurred expenditure of Rs. 2,09,29,267/-. The genuineness of such expenditure has been accepted by the AO. The only difference of opinion is as to whether the said expenditure was incurred for R & D purposes or for normal manufacturing activity.*

*The appellant in its submission has satisfactorily explained that it had a separate R&D unit which is physically separated and earmarked from manufacturing unit. The appellant has also explained that the Department of Scientific and Industrial Research (Ministry of Science and Technology, Government of India) has certified that the appellant has in-house R&D lab. The appellant had made application to State Government agency. The said Government agency has examined and verified appellant's capital expenditure and had approved said capital expenditure. In the facts and circumstances, it is a fact on record that the appellant had specialized and separate R&D unit, which requires capital expenditure for the purpose of R & D. The appellant has satisfactorily explained that the equipments viz. HPLC and GC etc. were used for R & D activity and not for manufacturing activity. The appellant*

*had also claimed such capital expenditure on R & D in the immediately preceding year which had been allowed by the AO after verification and examination.*

*In view of the above discussion, I am of the considered opinion that the appellant was entitled for 100% depreciation on capital expenditure incurred for the purpose of R&D activity. The AO is directed to allow appellant's claim. This ground of appeal is, therefore, allowed".*

5. Against the above order of the CIT(A), the revenue is in further appeal before us. We have considered the rival contentions and found that the capital expenses was made for purpose of use in R&D. The assessee had furnished certificate issued by the Department of Scientific and Industrial Research (Ministry of Science and Technology, Government of India) which has certified that the assessee company has in-house R & D lab which is recognized by DSIR. The assessee had also filed copy of application for recognition made to DSIR. On the basis of said application independent verification was made by DSIR and amount of capital expenditure on R & D for the assessment under appeal was checked and verified by them. The capital expenditure as disclosed in the application form also tallies with the capital expenditure on R&D as claimed by the assessee. As such, it is evident that the entire amount was verified and approved by an independent Central Government agency.

6. We also found that assessee has a separate R & D lab and all the materials, equipments and other goods are specifically used exclusively by R & D lab for which separate records are maintained. The company also has a separate Quality Control Lab which is meant to analyse all the commercial production batches of products which are meant for sale.

7. In view of the detailed finding recorded by the CTI(A) which has not been controverted, we do not find any reason to interfere in the findings of the CIT(A).

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 1<sup>st</sup> February, 2016.

**Sd/-**  
(अमरजीत सिंह)  
न्याईक सदस्य  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
(आर.सी. शर्मा)  
लेखा सदस्य  
**(R C SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date: 1<sup>st</sup> February, 2016.

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A)-8, Mumbai
- 4) The CIT-4, Mumbai.
- 5) विभागीय प्रतिनिधि "बी", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "B" Bench, Mumbai.
- 6) गार्ड फाईल  
Copy to Guard File.

आदेशानुसार/By Order

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

\*चव्हाण व.नि.स

\*Chavan, Sr.PS