

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 1985 & 2946 /Del./2013  
Assessment Year: 2007-08 & 2008-09**

D.C.I.T., Circle 3(1), New Delhi. <b>(Appellant)</b>	vs.	Cement Corporation of India Ltd., Core-5, Scope Complex, 7, Lodhi Road, New Delhi. PAN- AAACC0949B <b>(Respondent)</b>
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**ITA No. 5399/Del./2013  
Assessment Year: 2009-10**

A.C.I.T., Circle 3(1), New Delhi. <b>(Appellant)</b>	vs.	Cement Corporation of India Ltd., Core-5, Scope Complex, 7, Lodhi Road, New Delhi. <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Anshu Prakash, Sr. DR
<b>Respondent by</b>	Sh. Vishal Chandra Gupta, C.A.

<b>Date of Hearing</b>	28.08.2017
<b>Date of Pronouncement</b>	31.08.2017

**ORDER**

**Per L.P. Sahu, A.M.:**

These appeals of the Revenue were earlier disposed of by the Tribunal vide consolidated order dated 30.09.2014, whereby the appeals were dismissed. The Revenue challenged the said order in appeals before the Hon'ble High Court in appeals Nos. 279, 301 and 288/2015. The Hon'ble

jurisdictional High Court vide order dated 22.09.2015 disposed of the issue of depreciation involved in appeals, observing that *“in the considered view of the Court, there has been no occasion for the ITAT to seriously consider whether, for the AYs in question, there were any working units of the Assessee and if, in fact, the entire block of assets in respect of which depreciation was claimed was actually put to use. The ITAT also did not consider that there is no longer a requirement for the COD to grant permission to the Revenue to file an appeal.”*.

The Hon'ble High Court vide para 10 of the order, therefore, directed the Tribunal as under :

*“10. Consequently, the appeals are disposed of by setting aside the portion of the impugned order dated 30<sup>th</sup> September 2014 of the ITAT on the issue of depreciation and remanding the appeals to the ITAT for a fresh decision only on the aspect of depreciation claimed by the Assessee.”*

2. In view of the above direction of Hon'ble Court, the present appeals have again come up for hearing before the Tribunal for disposal on the limited issue of depreciation. As per directions of Hon'ble Court, the only question which needs to be adjudicated in these appeals is whether the assessee is entitled for depreciation on the assets of its various units which according to the AO stood completely closed and as per assessee were temporarily suspended.

3. The brief facts relevant to the issue are that the Assessing Officer vide assessment order disallowed depreciation worth Rs.53,57,552/-, Rs.45,86,536/- and Rs. 39,29,428/- respectively for A.Yrs. 2007-08, 2008-09 and 2009-10 out of total depreciation claimed by the assessee. The AO observed that the assessee has also claimed depreciation on plants of such units which stood completely closed for the last 8 years, as stated in the annual report, which is not permissible. The contention of the assessee was that the operation of the seven plants were suspended on account of paucity of funds; that units were running since long; that from the schedule of depreciation of assets, it is clear that all the plant and machinery were fully charged off and only the generator set and office equipments like computers and others were used for day to day office operation and depreciation was charged on those items only; that only operation of the plants was suspended but the units were not closed completely. The AO did not concur with the reply of assessee, stating that out of total units run by the assessee, seven units stood completely closed, as is evident from the order of BIFR dated 05.12.2005, wherein it has been mentioned that *"the 2<sup>nd</sup> phase to be implemented during 2006-07 and 2007-08, is proposed to be funded out of the sale proceeds of the 7 non-operating units"*. The AO therefore, observed that above units were completely closed down and the manufacturing activities

were not temporarily suspended as stated by the assessee. The AO further observed that once the individual asset is not put to use, which is prerequisite for availing depreciation u/s. 32 of the IT Act, the same becomes ineligible for block of assets on which depreciation is allowed as per Rule-5 and Appendix 1A of the IT Rules, 1962, but shall continue to remain the part of the block of assets for all other purposes except for the purpose of claiming depreciation unless put to use. Accordingly the depreciation as claimed stood disallowed.

4. During the course of hearing, the Id. Departmental Representative reiterating the observations of the Assessing Officer, submitted that since the depreciation has been claimed on the plants which stood completely closed and as such in view of the provisions of section 32, the AO was quite justified in disallowing the depreciation after relying on the decision of Hon'ble Supreme Court in Liquidators of Pursa Ltd vs. CIT 25 ITR 265(SC).

5. On the other hand, the Id. Counsel for the assessee-respondent submitted that even if it is taken for granted that some units of the assessee are closed, the depreciation has to be allowed on the entire block of assets as defined u/s. 2(11) of the IT Act and individual asset of each unit cannot be considered for that purpose, as also held by Hon'ble jurisdictional High Court

in the case of CIT vs. Bharat Aluminium Co. Ltd., 187 Taxmann 111. The ld.

Counsel for the assessee has also relied on the following decisions :

- (i). CIT vs. Union Carbide (I) Ltd. , 254 ITR 488 (Cal.)
- (ii). M/s. Swati Synthetics Ltd. vs. ITO (ITA No. 1165/M/2006 dt. 17.12.2009- Mumbai Tribunal)
- (iii). G.R. Shipping Ltd. vs. DCIT (ITA 822/Mum/05 dt. 17.07.2008- Mumbai Tribunal)

6. We have considered the rival submissions and have gone through the material available on record. From the above factual matrix and the contentions of both the parties, we find that the assessee has made two fold contentions in the instant case, inasmuch as, before the AO the assessee contended that all the plant and machinery were fully charged off and only the generator set and office equipments like computers etc. were used for day to day office operation and depreciation was charged on those items only, as the plants were not completely closed. On the other hand, the other contention of the assessee has also been that the depreciation has to be allowed on the entire block of assets as defined u/s. 2(11) of the IT Act and use of individual assets of each unit cannot be considered for the purpose of depreciation on entire block. A perusal of the assessment order reveals that the AO has not given the details of assets which were considered as ineligible for depreciation. On the other hand, the assessee has not produced any details before us to show that the depreciation was charged only on the generator

sets and office equipments like computers etc. None of the parties before us have unfolded the actual assets, their WDV etc., on which the depreciation was claimed or disallowed. As a matter of fact, the dispute still remains whether the units, on assets of which, the assessee claimed depreciation, were completely closed for ever or were kept stand by after temporary suspension of production. The assessee has not produced any material before us that the said units were kept stand by. Rather, it has also been contended on behalf of assessee before us that though as per BIFR order, those non-operative units were supposed for sale, but no action has been taken so far on account of pending approval from the Government of India. All these facts need proper examination at the level of AO before deciding the eligibility of the impugned assets for depreciation u/s. 32. The assessee is required to furnish complete details of assets, on which the depreciation has been claimed and the material before the AO to establish that the said units were kept stand by, pending approval of the Government for sale. After making proper examination and verification of all these facts, if it is found that the non-operative plants stood completely closed, then the Assessing Officer is required to consider the plea of the assessee that the assets of these non-operative units, remained as part and parcel of the block of assets during these years and shall decide the issue afresh in the light of the proposition of law laid down by various courts in the

decisions relied by the assessee as well as the decision rendered by Hon'ble Jurisdictional High court in the case of CIT vs. Oswal Agro Mills Ltd., (2012) 341 ITR 467 (Delhi). We accordingly, remit the matter back to the file of Assessing Officer for deciding the issue afresh in the light of observations made in the body of this order above. Needless to say, reasonable opportunity of being heard shall be afforded to the assessee. Accordingly, the appeal of the assessee deserves to be allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 31.08.2017.

**Sd/-**  
**(I.C. Sudhir)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 31.08.2017

*\*aks\**

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*