

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Rajpal Yadav JM]

ITA No.2041/Ahd/2015
Assessment Year: 2007-08

DCIT**Appellant**
Circle – 1(1)(1),
Ahmedabad

Vs.

M/s Agencies & Cargo Care Ltd**Respondent**
9-B, Sumatinagar Society,
Usmanpura, Ahmedabad-380013
[PAN : AAECA 7686 B]

Appearances by:

Mudit Nagpal for the appellant

None for the respondent

Date of concluding the hearing : 26.10.2017

Date of pronouncing the order : 26.10.2017

O R D E R

Per Pramod Kumar AM:

1. By way of this appeal, the appellant Assessing Officer has raised following grievance against the order of CIT(A)-1, Ahmedabad dated 06.04.2015 for the Assessment Year 2007-08.

“The CIT(A) has erred in law and on fact in deleting the disallowance of Rs.39,20,571/- considering storage tanks as plant and machinery and not building.”

2. We have heard learned Departmental Representative. None appeared for the assessee. We have perused the material on record and duly considered facts of the case in the light of the applicable legal position.

3. We find that there is no dispute that the issue is squarely covered by Tribunal's orders in assessee's own case for Assessment Years 2006-07 and 2008-09. It was so specifically noted in the order of CIT(A) and learned Departmental Representative has not been able to bring any material on record to controvert this position. We may, in this regard, refer to the following observations made by the learned CIT(A) in the impugned order:-

“5. I have perused the fact as explained by appellant in its submission as gathered from the order of Hon'ble ITAT. I have perused case laws relied on by appellant including orders of Hon'ble ITAT Rajkot as well as Ahmedabad in the case of appellant for A.Y. 06-07 and A.Y. 08-09. After considering the

facts and legal submission, I am inclined with the appellant that storage tanks are integral part of composite business (appellant's business is of terminaling of liquid cargos and transportation) of appellant comprises of pipe lines. Motors, valves, control panel, etc. and as per establish legal preposition if such storage tanks are integral part of the whole process of appellant's business and without such storage tanks the appellant's business cannot be conducted independently then such storage tanks has to be treated as planted as machinery. Hon'ble ITAT Ahmedabad "C" bench in the case of appellant for A.Y. 08-09 in ITA no. 384/Ahd/2013 vide order dt. 05/07/2013 held that such storage tanks are entitled for depreciation @ 15% being plant and machinery. This being subsequent assessment year then the impugned previous year under appeal, it is therefore, it can be concluded that appellant case is duly covered by such order of Hon'ble ITAT. As far as question of additional evidences in the form of photograph and appeal orders of earlier years are concerned, the appellant contended that the same were submitted before A.O. vide its submission dt. 22/02/13 in response to A.O's notice dt. 06/02/2013. The issue of admission of such evidences are now academic in view of A.O.'s verification of facts in subsequent assessment year 08-09 and Hon'ble ITAT order dt. 05/07/2013 for this year allowing such depreciation. It is therefore, following the ratio of Hon'ble ITAT the A.O. is directed to allow the depreciation on storage tanks @ 15% and delete the addition so made of Rs.39,20,571/-. The appellant gets relief accordingly."

4. As there is nothing to controvert the above findings of the Id. CIT(A) or to even challenge the matter being squarely covered by Tribunal's decision in assessee's own case for AYs 2006-07 and 2008-09, we see no reason to interfere in the order of the Id. CIT(A). We, therefore, confirm the same and decline to interfere in the matter.

5. In the result, the appeal is dismissed. Pronounced in the open court today on the 26th day of October, 2017.

Sd/-

Sd/-

Rajpal Yadav
(Judicial Member)

Pramod Kumar
(Accountant Member)

Ahmedabad, the 26th day of October, 2017

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad