

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.803/Mds/2014
निर्धारण वर्ष /Assessment Year: 2006-07

M/s.Carborundum Universal Ltd.,
Parry House, 43, Moore Street,
Chennai-600 001.

Vs. The Dy. Commissioner of
Income Tax, Large Taxpayer
Unit, Chennai.

[PAN: AAACC 2474 P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.R.Vijayaraghavan,
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Sasikumar, JCIT
सुनवाई की तारीख/Date of Hearing	:	17.04.2017
घोषणा की तारीख /Date of Pronouncement	:	08.06.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 26.12.2013 of Commissioner of Income Tax (Appeals), LTU, Chennai, in ITA No.99/11-12/LTU(A) for the AY 2006-07.

2.0 All the grounds of the appeal are related to the disallowance of additional depreciation amounting to Rs.1,19,82,000/- u/s.32(1)(ii) of IT Act. The assessee made the additions to the assets during the previous year relevant to the AY 2005-06 and used the plant and machinery for less than 180 days. Accordingly, the assessee claimed 50% of depreciation and additional depreciation during the previous year relevant to the AY 2005-06 and the remaining 50% of the additional depreciation was claimed by the assessee in the year under consideration. The AO was of the opinion that residual depreciation additionally cannot be allowed during the subsequent year since the plant and machinery was not new machinery. The AO further stated that from the introduction of the concept of the block of assets after allowing the depreciation, the cost of assets are included in the block of assets and as applicable for the year under consideration, the depreciation required to be allowed from the block of assets and there is no provision which allows additional depreciation in the block of assets. Further, the AO also was of the view that the additional depreciation is one time measure which is allowed only in the year of purchase of new machinery and accordingly, disallowed the amount of Rs.1,19,82,000/-.

3.0 The assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the assessee's appeal following on the decision of the Hon'ble ITAT Chennai decision in the case of M/s.Brakes India Ltd., The relevant part of the CIT(A) is extracted as under:

4.2.1 Further, Hon'ble ITAT in the case of Brakes India Ltd in ITA No.1069/Mds/2010 for A.Y. 2006-07 dated 06.01.2012 decided the issue against the assessee. The Hon'ble ITAT, D Bench, Chennai in the case of ABI Showatech India Ltd in ITA Nos.39 to 42 /Mds/12 dated 2.1.2013 for the AYs. 2004-05 to 2007-08 also confirmed the order of the CIT(A) following the decision of Jurisdictional High Court in the case of MM Forgings Ltd v. Addl. CIT (349 ITR 673) holding that the assessee is not entitled for 50% additional depreciation in the subsequent year. Respectfully following the same, the ground is dismissed.

4.0 We heard the rival submissions and perused the material placed on record.

The additional depreciation is allowed u/s.32(1)(iia) of IT Act for the new assets added during the year. The additional depreciation is a beneficial provision which is meant for modernizing the industries to improve the production in the industry and to be interpreted liberally. The assessee has purchased the new machinery during the financial year relevant to the AY 2005-06 and installed and used for the purpose of business. Therefore, the assessee has put to use the machinery for less than 180 days and the AO has allowed the depreciation @50 % as per the applicable rates. In respect of additional depreciation, the assessee has claimed 50% of the eligible rate of 20% and the balance 10% was claimed in the subsequent year. The assessee is entitled for 20% depreciation in the year in which it was acquired and installed. Since the assessee could not use the machinery for more than 180 days, the balance unutilized depreciation was claimed in the subsequent year. Since the assessee is entitled for the additional depreciation in the year of purchase and could not allow the depreciation in full for non-utilization, as a natural corollary, the remaining 50% of eligible depreciation required to be allowed in the

subsequent year. For ready reference, we extract the relevant provisions of Sec.32(1)(iia) of IT as under:

(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;]*

Though, the Act is silent on this issue since the provision is a beneficial provision, the additional depreciation cannot be disallowed in the subsequent year. Therefore, we hold that the assessee is entitled for additional depreciation. This view is upheld by the Hon'ble jurisdictional High Court in the case of M/s.Brakes India Ltd., and also this Tribunal in ITA No.1789/Mds/2014 in the case of M/s.Automotive Coaches & Components Ltd. vs. DCIT dated 12.02.2016 and M/s.Brakes India Ltd. v. DCIT in TCA No.551/2013 (Madras HC) dated 14.03.2017

5.0 Respectfully following the decision of the Hon'ble jurisdictional High Court we set-aside the orders of the lower authorities and direct the AO to

allow the balance additional depreciation in the AY under consideration.
Accordingly, the appeal of the assessee is allowed.

6.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on June 08, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 08, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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