

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

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND  
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1114/Mds/2017  
निर्धारण वर्ष /Assessment year : 2012-2013.

M/s. Parry Agro Industries Limited, **Vs.** The Deputy Commissioner of  
Parry House, Income Tax,  
5<sup>th</sup> floor, 43, Moore Street Corporate Circle 5(1)  
Chennai 600 001. Chennai.

**[PAN AAFCP 9414M]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. SP. Chidambaram, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Palanichamy, Addl CIT

सुनवाई की तारीख/Date of Hearing : 20-09-2017  
घोषणा की तारीख /Date of Pronouncement : 21-09-2017

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:**

Assessee in this appeal filed against an order dated 31.01.2017 of the Id. Commissioner of Income Tax (Appeals)-3, Chennai, has taken altogether four grounds of which ground No.1 & 4 are general in nature needing no specific adjudication.

2. Ld. Counsel for the assessee at the outset submitted that he was withdrawing ground No.3. Accordingly, ground No.3 is dismissed as withdrawn.

3. This leaves us with ground No.2, which assails disallowance of additional depreciation claimed by the assessee.

4. The additional depreciation claimed by the assessee was the balance which remained from the claim made for assessment year 2011-12 for plant and machinery used for a period less than 180 days. Assessee had claimed only 50% of the additional depreciation for which it was eligible, since the new plant and machinery on which such depreciation was claimed was put to use for a period less than 180 days in the previous year relevant to assessment year 2011-12. Claim of the assessee for the balance additional depreciation for the impugned assessment year was declined by the Id. Assessing Officer. Issue in our opinion is squarely covered in favour of the assessee by the judgment of Jurisdictional High Court in the case of *CIT vs. T.P. Textiles (P) Ltd (2017) 79 taxmann.com 411*. What was held by their lordships at paras 10.1 to 11.5 of the judgment is reproduced hereunder:-

*'10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee*

*claiming the balance 10% of additional depreciation in the succeeding assessment year.*

*10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.*

*10.3. The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:*

**!! .... 32. (1) .....**

Provided also that where an asset referred to in clause (ia) or the first proviso to clause (ia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (ia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (ia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: .....¶ (Emphasis is ours)

*11. We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.*

*11.1. The relevant part of the Memorandum is extracted hereafter:*

"..... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.

*This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."*

11.2. *A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.*

11.3. *In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.*

11.4. *We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.*

11.5. *In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance*

*depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days”.*

We, are therefore of the opinion that assessee was eligible for claiming balance 10% of the depreciation in the impugned assessment year. Ld. Assessing Officer is directed to allow such claim. Ground No.2 of the assessee stands allowed.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced on Thursday, the 21st day of September, 2017, at Chennai.

**Sd/-**  
**(जॉर्ज माथन)**  
**(GEORGE MATHAN)**  
न्यायिक सदस्य/JUDICIAL MEMBER  
चेन्नई/Chennai

दिनांक/Dated: 21st September, 2017.

KV

**Sd/-**  
**(अब्राहम पी. जॉर्ज)**  
**(ABRAHAM P. GEORGE)**  
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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