

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 894/Mds/2017
निर्धारण वर्ष /Assessment year : 2009-2010

M/s. SPAC Tapioca Products (I) Ltd,
Now known as SPAC Starch Products
(India) Ltd.
P & C Towers, 2nd floor,
140, Perundurai Road,
Erode 638 011.

Vs. The Assistant Commissioner of
Income Tax,
Circle 1,
Erode

[PAN AACCS 7137B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Sridhar, Advocate
: Smt. S. Vijayaprabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 09-11-2017
: 27-11-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Grounds taken by the assessee in this appeal, which is
against an order dated 27.02.2017 of Id. Commissioner of Income Tax
(Appeals)-3, Coimbatore read as under:-

"1. The order of The Commissioner of Income Tax (Appeals) - 3, Coimbatore dated 27.02.2017 in I.T.A. No.112/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the re-assessment as validly initiated and completed as per the findings in para 5 of the impugned order without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The CIT (Appeals) erred in sustaining the addition of Rs.23,80,2517-quantified as excess depreciation on certain plant & machinery equating the same as building which resulted in reworking of the depreciation in the computation of taxable total income without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that the splitting up of the items as plant & machinery and building so as to adopt different rates of depreciation was wholly unjustified and ought to have appreciated that the plant & machinery under consideration should be taken into consideration as a whole thereby vitiating the decision rendered in para 7 of the impugned order.

6. The CIT (Appeals) erred in not considering the Ground No.6 of statutory Form No.35 without assigning proper reasons and justification.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing".

2. One of the grounds raised by the assessee is that Id. Commissioner of Income Tax (Appeals) had confirmed the reassessment without giving a proper reason or justification.

3. Facts apropos are that assessee in food processing industry had filed its return of income for the impugned assessment year disclosing income of Rs.1.58,10,870/- and assessment u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') was completed on 16.12.2011 accepting the said income. Assessee had claimed 100% depreciation on fixed assets relating to what is known technically as "Upflow Anaerobic Sludge Blanket Reactor" (in short "UASBR"). The said UASBR is a form of ANAEROBIC digester system which is used for removal of organic pollutants from waste waters and is mainly used in foundry industry and chemical industry. Assessee had claimed 100% depreciation considering the UASBR as a waste water treatment equipment and this was allowed in the original assessment.

4. The assessment was thereafter reopened for a reason that cost of construction of gas storage tank, milk storage tank etc, presumably a part of the UASBR was not eligible for 100% depreciation. Assessee had shown fixed assets of Rs.2,01,12,628/- in its books of accounts as addition to buildings whereas while computing the total income for tax purposes, depreciation, the addition on

account of buildings was shown as Rs.1,18,55,187/- only and 100% depreciation was claimed on Rs.83,29,562/-. Ld. Assessing Officer thereafter completed the reassessment by excluding from the depreciation, items which in the opinion of the Id. Assessing Officer, were part of civil works namely structural, FRB room, blower room and power room of UASBR. This resulted in a disallowance of Rs.23,80,251/-.

5. Aggrieved, the assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). The case was posted for hearing by the Id. Commissioner of Income Tax (Appeals) on 17.01.2017 when the assessee requested for adjournment. Thereafter the case was posted for final hearing on 10.02.2017. As per the Id. Commissioner of Income Tax (Appeals) none appeared on that date. Ld. Commissioner of Income Tax (Appeals) confirmed the addition made by the Id. Assessing Officer with the following observations.

“6. The Assessing Officer has reworked the eligible depreciation in the following manner:-

The assessee has shown fixed assets of Rs.2,01,12,628/- as addition to buildings during the year. While in depreciation statement the addition to building shown is Rs./1,18,55,187/-. On scrutiny it is noticed that the structure used for Methane Recovery Anaerobic Digester System, assessee had claimed at the rate of

100% since the asset was put to use less than 180 days the depreciation was restricted accordingly.

Methane Recovery Anaerobic Digester System is an item which is eligible for 100% depreciation. Assessee has shown some items which are part of civil work. Even in the financial statement prepared under the Company's Act these items have been considered under the head building. Depreciation rate on building is 10% and as assessee has used the asset for less than 180 days she is entitled to 50% of the amount. Below are the assets which fall in the category of building :

ITEM	Depreciation Claimed
UASBR – Strucutrals	21,64,958
UASBR –FRB Doom	24,26,593
UASBR –Blower Room	
3,58,290	
UASBR – Power Room	
3,39,606	

	52,89,446

The eligible depreciation works out to Rs.2,64,472/- as against Rs.26,44,723/- claimed. The excess depreciation claimed of Rs.23,80,251/- is therefore disallowed and added to the total income.

7. The assessee has not contrived the findings of the Assessing Officer with the fact that depreciation on buildings is 10% and the other assets are put to use for less than 180 days and therefore entitled for 50% of the amount for depreciation. In view of the same, the excess depreciation claimed of Rs.23,80,251/- as determined by the Assessing Officer is confirmed in the hands of the appellant”.

6. Now before us, the Id. Authorised Representative submitted that Id.CIT(A) did not consider the details submitted by the assessee. According to him, Id.CIT(A) did not give reasons why structural room,

FRB room, blower room and power room could not be considered as part of UASBR.

7. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

8. We have considered the rival contentions and perused the orders of the authorities below. Observation of the Id. Commissioner of Income Tax (Appeals) has been reproduced at para 5 above. Grounds raised by the assessee not only assailed the reopening but also assailed findings of the Id. Assessing Officer that civil work associated with recovery systems were not eligible for depreciation at the rate of 100%. We find that assessee was not represented before the Id. Commissioner of Income Tax (Appeals). Id. Commissioner of Income Tax (Appeals) had not dealt with the merits of the issue raised by the assessee, viz whether buildings used in UASBR system could be considered as plant or not. In the facts and circumstances of the case, we are of the opinion that the issue requires a fresh look by the Id. Commissioner of Income Tax (Appeals). We set aside the order of the Id. Commissioner of Income Tax (Appeals) and remit the case back to the file of the Id. Commissioner of Income Tax (Appeals) for

consideration afresh in accordance with law.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

10. Order pronounced on Monday, the 27th day of November, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 27th November, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF