

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA**

[Before Shri P.M. Jagtap, AM and Shri Aby. T. Varkey, JM]

**I.T.A. No. 1485/Kol/2016
Assessment Year: 2008-09**

***D.C.I.T, Cir-3(1), Kolkata.....Appellant
P-7, Chowringhee Square,
Aayakar Bhawan, 4th Floor,
Room No. 19,
Kolkata - 700 069***

***M/s. Ankit Metals & Power Ltd.....Respondent
35, Chittaranjan Avenue,
Central Avenue,
Kolkata - 700 012
[PAN: AAECA 5230 B]***

Appearances by:

*Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.
Shri S.K. Tulsian, Advocate appearing on behalf of the Assessee.*

Date of concluding the hearing : January 02, 2018

Date of pronouncing the order : January 05, 2018

ORDER

Per P.M. Jagtap, AM

This appeal is preferred by the revenue against the order of Ld. CIT(Appeals) - 9, Kolkata dated 18.03.2016 and in the solitary ground raised therein, the revenue has challenged the action of the Ld. CIT(A) in deleting the disallowance of Rs. 98,18,225/- made by the A.O. on account of alleged wrong claim of the assessee-company for excess depreciation on Power Plant.

2. As noted at the outset, there is a delay of 6 days on the part of the revenue in filing this appeal before the Tribunal. In this regard, the revenue has filed an application seeking condonation of the said delay and keeping in view the submissions made therein which are duly supported by an affidavit filed by the concerned Assessing

Officer, we are satisfied that there was a sufficient cause for the delay of 6 days on the part of the revenue in filing this appeal before the Tribunal. Even the learned counsel for the assessee has not raised any objection in this regard. We, therefore, condone the said delay and proceed to dispose of this appeal of the revenue on merit.

3. The assessee in the present case is a company which is engaged in the business of manufacturing of Sponge Iron, M.S. Ingots/Billets, TMT Bar as well as generation of power and trading of steel items. The return of income for the year under consideration was filed by it on 30.09.2008 declaring a total income of Rs. 23,18,85,114/-. In the assessment originally completed under section 143(3) vide an order dated 27.12.2010, the total income of the assessee was determined by the A.O. at Rs. 28,02,94,898/- after making certain additions. The records of the said assessment subsequently came to be examined by the Ld. CIT and on such examination, he found that depreciation of Rs. 1,96,36,450/- was claimed by the assessee on the additions made to its Power Plant after 01.10.2007. According to the learned CIT, the assessee-company having utilised the said assets for less than 180 days during the year under consideration was entitled for depreciation at 50% of the normal rate and there was an error in the order of the A.O. passed under section 143(3) in allowing depreciation to the assessee at 100% of the normal depreciation. He, therefore, set aside the order passed by the A.O. under section 143(3) vide an order passed by him under section 263 with the direction to the A.O. to pass an order de-novo after carrying out necessary verification of the facts and figures.

4. In pursuance of the order passed by the learned CIT under section 263, fresh assessment proceedings were initiated by the A.O. and since there was no compliance on the part of the assessee to the notices issued by him fixing the case of the assessee for hearing from time to time, the Assessing Officer completed the assessment ex-parte under section 144/263/143(3) vide an order dated 21.03.2014. In the assessment so completed, the claim of the assessee for depreciation of Rs. 1,96,36,450/- on the Power Plant was restricted by him to Rs. 98,18,225/- thereby making an addition of Rs. 98,18,225/- to the total income of the assessee.

5. Against the order passed by the A.O. under section 144/263/143(3) of the act, an appeal was preferred by the assessee before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was pointed out by the assessee from the relevant tax audit report that depreciation only at 50% of the normal rate was claimed by it on the additions made to Power Plant during the year under consideration after 01.10.2007 since the said assets were utilised for less than 180 days. It was submitted that a further disallowance made by the A.O. thus had resulted in a total disallowance at 75% of normal depreciation which was totally unjustified. Keeping in view this specific submission made on behalf of the assessee, the Ld. CIT(A) directed the A.O. to verify the stand of the assessee and delete the excess disallowance made on account of depreciation. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the Ld. CIT(A), depreciation at 50% of the normal rate only was claimed by it on the addition made to the Power Plant during the year under consideration after 01.10.2007 since the said assets were put to use for less than 180 days during the year under consideration. Keeping in view this specific claim made by the assessee, the Ld. CIT(A) directed the A.O. to verify the same and allow appropriate relief to the assessee. In our opinion the impugned order of the Ld. CIT(A) on this issue is quite fair and reasonable in as much as he has given an opportunity to the A.O. to verify the claim made by the assessee specifically for the first time before him with the direction to the A.O. to allow appropriate relief to the assessee only after such verification. Even the learned DR has not been able to point out any infirmity in the order of the Ld. CIT(A) which has caused any real grievance to the revenue. We, therefore, find no justifiable reason to interfere with the impugned order of the Ld. CIT(A) and upholding the same, we dismiss this appeal filed by the revenue.

7. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 5th January, 2018.

Sd/-

(Aby.T. Varkey)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 05/01/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Ankit Metals & Power Ltd., 35, Chittaranjan Avenue,
Central Avenue, Kolkata – 700 012.
2. D.C.I.T, Cir-3(1), P-7, Chowringhee Square, Aayakar Bhawan, 4th
Floor, Room No. 19, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata