

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 1309/Kol/2015

Assessment Year : 2012-13

DCIT, Circle-10(1), Kolkata

-vs-

M/s Maa Amba Infrastructure (P) Ltd.

[PAN: AAECM 6507 F]

(Appellant)

(Respondent)

For the Appellant : Shri Saurabh Kumar, Addl. CIT Sr. DR

For the Respondent : Shri Akkal Dudhewala, AR

Date of Hearing : 19.03.2018

Date of Pronouncement : 23.03.2018

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-4, Kolkata [in short the Id CIT(A)] in Appeal No.1941/CIT(A)/Cir-10(1)/14-15 dated 10.08.2015 against the order passed by the DCIT, Circle-10(1), Kolkata [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 14.03.2015 for the Assessment Year 2012-13.

2. The first issue to be decided in this appeal is as to whether the Id CITA was justified in treating the warehouse rent as income from business instead of house property income in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is engaged in the business of manufacturing and trading in iron or steel and letting out warehouse on rent. The return of income for the Asst Year 2012-13 was filed by the assessee company on

27.9.2012 declaring total income of Rs 40,55,320/- . The assessee received rent of Rs 1,33,03,110.60 from the property owned in the form of warehouse situated at Khaprail Road, Nema, Matigara, Dist. Darjeeling – 734010 near Siliguri Town and rented to the various parties (i) Hindustan Unilever Limited , (ii) Future Supply Chain Solutions Limited , (iii) Sigma Supply Chain Solutions Limited , (iv) Amrit Feeds Limited, (v) N.B.Suppliers, (vi) Kurseong Carriers Private Limited , (vii) Godrej Agrobet Limited, (viii) Jai Trading, (ix) Bidyut Ghosh and (x) Hatsun Agro Products Limited during the year. The assessee claimed such rent from the said warehouse under the head ‘income from business or profession’ being the owner of warehouse (building). The Id AO observed that the rented area / portion of the building has not been used by the assessee for the purpose of its business. The Id AO discussed the provisions of section 22 of the Act and held that the warehouse was a property owned by the assessee and not used for business and therefore the income earned from letting out was in nature of ‘house property’ income. According to Id AO, it makes no difference if the assessee is formed with the object of developing & operating landed properties. The Id AO observed that the warehouse was not used by the assessee but had been let out and therefore it could not be said that it was used for business. The Id AO held that the primary object of the company was to let out the warehouse for which it had charged a composite rent for letting out the spaces along with fixtures, plants & amenities. The Id AO relied on the decisions of Hon’ble Supreme Court in the case of S.G.Mercantile Corporation (P) Ltd reported in 83 ITR 700 (SC) and Shambhu Investment (P) Ltd vs CIT (Civil Appeal No. 6459 to 6460 of 2001). The Id AO accordingly treated the income received from letting out warehouse under the head ‘house property’ and thereby not allowing expenses claimed in computing business income.

2.2. The assessee submitted that it was formed in the year 2006. The main object of forming the company was to conceive, own, set-up, establish and construct infrastructure facilities of any type or form and also to operate, manage, control &

exploit the building, complex or the super structure build by it. In pursuance of its main objects, the assessee company acquired a land at Matigara. After conducting market survey and taking into account the economic scenario and local demand, the assessee had conceived to construct, set-up a warehouse / godown with all the necessary infrastructure and facilities for storage of goods and products. The assessee accordingly constructed a warehouse of international standards which it exploited in a commercial manner by providing storage facilities to multinational companies. For constructing the warehouse, the assessee got line of credit sanctioned from the State Bank of India against the mortgage of the land and guarantees furnished by its directors. The warehouse was constructed as per the standard requirements of multinational companies to serve their prime purpose of storage of goods in safe and efficient way. The warehouse was constructed with pre-fabricated structures to facilitate easy handling and storage of goods. Necessary in-roads and track lines were constructed for easier loading & unloading of goods. Forklifts etc were also installed at the warehouse . The warehouse was constructed with complete electrical installations having automated features which were necessary to ensure proper and safe handling of storage of goods and products. Security & alarm systems were also installed therein. The assessee invested substantial sums in installing central air-conditioning plant, generator, water pumps, electrical fittings and various machineries, computers & furniture to make the structure fit to be used as an exclusive storage facility for FMCG companies. Accordingly it was pleaded that the assessee had constructed a specialized infrastructure facility by way of warehouse in organized manner so as to be exploited for commercial gains. It was pleaded that the assessee had employed a large workforce such as night guards, sweepers, watchmen, electricians and other staff member etc for providing contractual amenities at the warehouse. The assessee was thus in the overall control, supervision and management of the premises. In consideration for providing the storage space in the warehouse along with attendant ancillary services and amenities, the assessee charged a fixed monthly license fee from

all the tenants in the warehouse. Accordingly, it was submitted that the assessee was in the business of constructing, operating and maintaining a warehouse, wherein the dominant motive was to construct a warehouse and exploit it in a purely commercial manner to earn profits. Based on these facts, the assessee had offered the receipt of license fee as 'income from business'. The assessee also placed reliance on the decision of the Hon'ble Madras High Court in the cases of CIT vs NDR Warehousing (P) Ltd (TCA No. 303 to 305 & 812 of 2013 dated 1.12.2014) wherein the rental income earned by the assessee from warehouses was held to be assessable as 'business income'. It was argued that it was the Id AO's view that the main object of the company was to construct and let out properties was of no consequence. The assessee drew the attention of the Id CITA to the recent decision of the *Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd reported in 56 taxmann.com 465 (SC)*. The Id CITA appreciated the contentions of the assessee and by placing reliance on the decision of the Hon'ble Supreme Court in the case of Chennai Properties supra and the decision of co-ordinate bench of this tribunal in the case of Dutta Properties vs ITO in ITA No. 973 to 979/Kol/2012 dated 1.7.2015, held that the rental income is to be taxed under the head 'income from business'. Aggrieved, the revenue is in appeal before us on the following ground:-

*1. Treatment of Warehouse rent as House Property income instead of Business income.*

2.3. We have heard the rival submissions. Briefly stated facts are that the assessee company was formed with the main object as stated in the Memorandum of Association, to conceive, plan, survey, design, study and evaluate all steps, process, techniques and methods for setting up of all types of infrastructure projects, facilities or works, and to, build, construct, install, erect, undertake, commission, establish, own, operate, manage, maintain, control and administer, lease, transfer, all infrastructure projects, facilities or works including agricultural, parks, gardens, roads, bridges, flyovers, highways, roadways, structures and facilities ..... In pursuance of

its objective, the assessee had acquired land at Matigara and constructed a specialized warehouse of international standards providing and / or for rendering storage facilities to multinational companies. The warehouse is fitted with complete machineries, pre-fabricated structures, electrical installations and security systems. The assessee has also employed a huge labour force to run, operate and maintain the warehouse. Part of the warehouse was let out in the ordinary course of its business and rental income derived thereon was offered under the head 'income from business'. Accordingly, we hold that the assessee had constructed a specialized infrastructure facility by way of warehouse in organized manner so as to be exploited for commercial gains. We hold that the decisive test is the true nature of activity carried out by the assessee which produces the income from warehouse and not the way in which it is measured i.e whether it is variable or a fixed monthly sum. The Id CITA had categorically observed that the assessee had made substantial investment in construction of a building and in acquisition and installation of plant and machineries so as to develop, operate & maintain a modern warehousing facility which could simultaneously be used by number of FMCG companies for storing numerous types of consumer products. The rent charged by the assessee was therefore not only for letting out of the building simplicitor but for providing incidental facilities and amenities for safe storage and handling of goods in an efficient manner. The air conditioning provided within the warehousing facilities enabled the occupiers to preserve the goods without being subjected to vagaries of nature. The assessee had carried on an organized activity with a view to commercially exploit the civic infrastructure set up by it at substantial cost . For setting up such civic infrastructure, the assessee had borrowed substantial sums on which the assessee was paying interest at commercial rates of interest. For carrying on such organized activity , the assessee had employed skilled and semi skilled staff.

2.3.1. We find that the issue under dispute is settled by the decision of the *Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd reported in 56 taxmann.com 465 (SC)*. In that case, the assessee was a company incorporated with the main object, as stated in the Memorandum of Association, to acquire the properties and to let out those properties. The assessee had therefore acquired certain properties and rented it out and the rental income received therefrom was shown as income from business. The AO however assessed the rental income under the head 'income from house property' instead of 'business'. When this question came up for consideration before the Hon'ble Supreme Court, the Court gave paramount importance to the main objects laid down in the Memorandum of Association to determine the nature of rental income. The Court found that the main object of the assessee was to acquire and rent out properties and accordingly it held that the rental income was earned in the regular course of assessee's business as set out in the object clause of its Memorandum. The Hon'ble Supreme Court distinguished the decisions of its earlier co-ordinate Bench in the case of *East India Housing & Land Development Trust Ltd vs CIT reported in 42 ITR 49 (SC)* and *Sultan Brothers (P) Ltd vs CIT reported in 51 ITR 353 (SC)*. Instead the Supreme Court followed the law laid down in the decision by the same court in *Karampura Development Co. Ltd vs CIT reported in 44 ITR 362 (SC)*. In the aforesaid case, the assessee was formed with the purpose of acquiring and disposing coal mining rights. In pursuance of its objective, the assessee had acquired long term leases of coalfields which was subsequently let out to various customers. The rental income derived from letting out coalfields was held assessable as business income by the Hon'ble Supreme Court. Applying the ratio laid down in the aforesaid judgement, the Hon'ble Supreme Court held where letting out of properties is the business of an assessee, the rental income derived therefrom is business income. We also find that the decision of Hon'ble Supreme Court relied upon by the Id AO in the case of *S.G.Mercantile Corporation (P) Ltd vs CIT reported in 83 ITR 700 (SC)* is actually in

favour of the assessee , inasmuch as , in that case, the income was assessed only as business income.

2.3.2. We also find that the assessee was formed in the year 2006 and had been deriving rental income from warehouse from that year and the same has been accepted by the revenue upto Asst Year 2011-12 as 'income from business'. The Id AR also stated that the assessment for the Asst Year 2011-12 was completed u/s 143(3) of the Act, wherein the rental income was assessed only under the head 'income from business'. No new material was brought to on record to establish with sufficient evidence that the position accepted by the revenue in earlier years was untenable either on facts or as per law. Hence when there is no change in facts during the year under consideration, there is no reason for the revenue to take a differential stand by treating the rental income as income from house property. The principle of consistency cannot be given a go by eventhough the principle of resjudicate does not strictly apply to income tax proceedings. Reliance in this regard is made on the decision of *Hon'ble Supreme Court in the case of Radhasoami Satsang vs CIT reported in 193 ITR 321 (SC)*.

2.3.3. The Id DR placed reliance on yet another recent decision of the *Hon'ble Supreme Court in the case of Raj Dadarkar & Associates reported in (2017) 81 taxmann.com 193 (SC)* which was held in favour of the revenue. The Id AR stated that the said decision is distinguishable on facts. In the case of Raj Dadarkar supra, the assessee therein, had let out shops / stalls to various occupants on monthly rent. The assessee collected charges for minor repairs, maintenance, water and electricity. As per the terms of allotment by the BMC, the assessee was bound to incur all these expenses and assessee in turn collected extra money from the allottees. The assessee collected 20% of monthly rent as service charges. Such service charges were also used for providing services like watch and ward, electricity, water, etc. The tribunal

*held that the amounts collected towards services were inseparable from basic charges of rent. The Tribunal further held that the assessee had not established that it was engaged in any systematic or organized activity of providing service to the occupiers of the shops / stalls so as to constitute the receipts from them as business income. In our opinion, the assessee received income by letting out shops / stalls, and therefore, the same has to be held as income from house property.*

The Hon'ble Supreme Court in the case of Raj Dadarkar supra had placed heavy reliance on the finding of aforesaid facts recorded by the tribunal. Whereas in the instant case before us, the Id CITA had categorically stated that the assessee had carried on an organized activity with a view to commercially exploit the civic infrastructure set up by it at substantial cost incurred out of own funds as well as borrowed funds. This finding is not controverted by the revenue before us. Accordingly we hold that the reliance placed on the decision of Raj Dadarkar supra does not advance the case of the revenue and is factually distinguishable. It is not in dispute that the warehouse has been constructed by the assessee with several infrastructure facilities in accordance with the requirements of the specific multinationals so as to store their products in the warehouse.

2.3.4. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the decision of the Hon'ble Supreme Court in the case of Chennai Properties supra, we hold that the Id CITA had rightly directed the Id AO to treat the warehouse rentals as income from business and consequentially allow the expenditure claimed in the return as business expenditure. Accordingly, the Ground No.1 raised by the revenue is dismissed.

3. The next issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the disallowance of commission paid to related parties by invoking provisions of section 40A(2) of the Act in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the Id AO observed that the assessee has paid service commission of Rs 1,47,26,906/- during the year in comparison to Rs Nil in the earlier year. The assessee was requested to explain the nature of work associated with the commission payment, the circumstances under which the payment became necessary when no such payment was made earlier. The assessee replied that the unit was at the inception stage of commercial production and has less idea about the market availability of the produce. The company was unable to obtain orders from open market. There was daily production of its product and a huge working capital involvement was there. Hence it had to appoint M/s R.S.Ispat Ltd (its holding company) for obtaining orders for and on behalf of the assessee for which payment of commission to them was warranted. The assessee had the following trading activity during the relevant year :-

Sale of Finished goods – Non alloy steel ingot	Rs 36,05,83,080/-
Sale of Raw materials & Stores - C.I. Ingot Mould	Rs 29,26,980/-
- Ferro Silicon	Rs 20,48,080/-
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	Rs 36,55,58,140/-
Sale of Trading Goods - M.S.Scrap	Rs 6,38,154/-
- M.S.Wire	Rs 26,14,500/-
- Misc. Items	Rs 4,67,215/-
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	Rs 36,92,78,009/-

Out of the total sale of goods of Rs 36,92,78,009/-, the following sales have been made to persons specified in section 40A(2)(b) of the Act and having same office address with the assessee :-

<u>Associates</u>	<u>Year ended</u>	<u>Sale of Goods</u>
R.S.Ispat Ltd	31.3.2012	Rs 41,31,918/-
R.S.Concast Ltd	31.3.2012	Rs 35,27,913/-

Bajrangbali Rolling Mills Ltd	31.3.2012	Rs 14,62,16,721/-
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		Rs 15,38,76,552/-
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The Id AO observed that since the aforesaid companies were having the same address as that of the assessee, the assessee had to pay commission to obtain orders from the market does not hold water. Moreover, in the earlier year ended 31.3.2011, the assessee had made net sale of products to the tune of Rs 37,73,77,839.50 , on which no commission was paid. The Id AO concluded that this payment of commission to related parties during the year under appeal was made only with a view to inflate the expenditure and reduce the taxable income of the assessee and accordingly the commission paid on sales made to related parties out of the total sales needs to be proportionately disallowed u/s 40A(2)(b) of the Act. He found that sales made to related parties constitute 42% of total sales of the year and accordingly disallowed 42% of commission payment thereon amounting to Rs 61,85,300/- (1,47,26,906 \* 42%) in the assessment.

The Id AO also made an alternative observation that since the service commission of Rs 61,85,300/- was paid only to related parties having the same address, such claim of the assessee company is not admissible u/s 37(1) of the Act as the said payment does not constitute business purpose.

3.2. The assessee stated that it belongs to the Agarwal Group of which M/s R.S.Ispat Limited is the flagship company . R.S.Ispat Limited is primarily in the business of manufacturing and trading of steel and allied products and has been in the business of more than 2 decades. R.S.Ispat Limited is a reputed name in the steel industry and has an established marketing and distribution channels. The assessee therefore decided to avail the benefit of marketing and distribution network, knowledge and expertise of R.S.Ispat Limited and appointed it as their sole sale promotion agent for a

period of one year. Formal agreement was executed on 30.3.2011 which was duly notarized. In terms of the sales promotion agreement, R.S.Ispat Ltd was entrusted with the task of assisting in sales and other sales related auxiliary services. In consideration, the assessee was required to pay 4% of the total sales invoice billed during the tenure of the agreement. Accordingly, in terms of the sales promotion agreement, the assessee paid commission of Rs 1,47,26,906/- to M/s R.S.Ispat Limited. It was pleaded that the legislative intent of enacting section 40A(2) of the Act was to curb avoidance of tax by way of shifting of profits from one concern to another, by making payments to sister concerns/ related parties. The assessee's flagship company M/s R.S.Ispat Limited is an independent operational company which is assessed to tax by DCIT, Circle 3(1), Kolkata and had filed its return of income for the Asst Year 2012-13 declaring total income of Rs 2,94,85,510/-, which admittedly includes the commission payments made by the assessee to them. It was pleaded that R.S.Ispat Limited is having a turnover of Rs 431 crores for the year ended 31.3.2012 and is a regular operational company . Hence there is no scope of avoidance of tax as alleged by the ld AO while making the disallowance u/s 40A(2) of the Act. It was also pleaded that the ld AO had not brought any material on record in the form of comparable cases to prove that the payment made to R.S.Ispat Limited was excessive or unreasonable so as to invoke section 40A(2) of the Act. It was further pleaded that the ld AO by his own action had accepted the payment of commission at 4% to R.S.Ispat Limited for sales made to unrelated parties which constitutes 58% of total sales. This goes to prove that the genuinity of the commission agreement, factum of services rendered by R.S.Ispat Limited have been accepted as such by the ld AO. It is not the case of the ld AO that the assessee had paid more commission to related parties at a higher percentage when compared to payment made to unrelated parties. His only allegation is that there is no need to pay any commission for sales made to related parties and accordingly had invoked section 40A(2) of the Act for disallowance of the proportionate commission. It was further pleaded that the commission payments made

to R.S.Ispat Limited were duly subjected to levy of service tax and deduction of tax at source and that the payments were made by account payee cheques and duly confirmed by the recipients and offered to tax in their returns at maximum marginal rate. It was also submitted that R.S.Ispat Limited had reported commission income of Rs 16,12,01,851/- for the year ended 31.3.2012 in their profit and loss account, which goes to prove that they are in the regular business of earning service commission from other parties also and hence there is absolutely no scope to doubt the entire transaction or the agreement entered into with them, by treating the same as a sham or colourable device. Undoubtedly, the payee had experience in steel business which had enabled itself to earn commission income from various parties in the market including the assessee herein. These contentions were duly appreciated by the Id CITA and accordingly the disallowance made by the Id AO was deleted. Aggrieved, the revenue is in appeal before us on the following ground:-

*2. Disallowance of payment of service commission to related parties under same group of management and located at the same address with the assessee u/s 40A(2) of the IT Act, 1961.*

3.3. We have heard the rival submissions. We find that the Id CITA had given a categorical finding that the assessee had completely outsourced its marketing activity to R S Ispat Limited which had sourced the entire sales to the assessee. Admittedly the sales were made by the assessee to its related parties (42%) and also to unrelated parties (58%). The commission was paid by the assessee to R.S.Ispat Limited @ 4% on total sales made by the assessee. It is not in dispute that R S Ispat Limited had established an extensive marketing network; capable of procuring orders for the assessee's products. Since under the agreement, R.S.Ispat Limited was entrusted with the entire marketing and sales promotion activities and the assessee was not required to undertake any marketing efforts of its own, the parties had agreed for a uniform basis for computing the amount of compensation payable by the assessee in the form of commission. The commission payable to R.S.Ispat Limited therefore was not linked

to orders procured from any specified parties but the basis adopted for payment of commission was 4% of the gross turnover of the assessee for the relevant period. The Id CITA had further given a finding that the Id AO had not found or proved the assessee's agreement with R.S.Ispat Limited to be sham or bogus. It is not in dispute that the factum of services rendered by R.S.Ispat Limited are doubted by the Id AO in as much as the Id AO had allowed the commission payments made to R.S.Ispat Limited to the extent of 58% of total payments. Hence the commission agreement, nature of services rendered by payee stands proved conclusively. The payee had also shown the commission income in its returns and it is also found that it had reported a sum of Rs 16.12 crores as commission income in its profit and loss account and had suffered tax at maximum marginal rate. Hence it cannot be construed as a device to shift the profits from profit making entity to loss making unit by way of having transactions with the related parties. We find that the assessee had made payment of commission at 4% on sales made to both related as well as unrelated parties. Hence the percentage of commission at 4% is determined to be at Arm's Length. Hence the same cannot be construed as excessive or unreasonable within the meaning of section 40A(2) of the Act. There is no evidence to prove that the impugned transaction of payment of commission was prompted by consideration of tax avoidance. On the contrary, the evidences suggest that the payee had suffered taxes on the said commission income at maximum marginal rate and had also derived commission income of Rs 16.12 crores which admittedly includes commission payments made by the assessee herein. We hold that the Id CITA had rightly appreciated these facts and contentions of the assessee and had rightly deleted the disallowance and we find no infirmity in the said order of the Id CITA in this regard. Accordingly, the Ground No. 2 raised by the revenue is dismissed.

4. The last issue to be decided in this appeal is as to whether the Id CITA was justified in directing the Id AO to grant depreciation at 15% on Electrical Installations in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the assessee claimed depreciation at the rate of 15% on Electrical Installations reflected in the Balance Sheet. In the course of assessment proceedings, the assessee had furnished the details of opening and closing written down value (WDV) of plant and machineries. The Id AO thereafter show caused the assessee to explain as to why the electrical installations at the factory should not be treated as 'office equipment' instead of 'plant and machinery' and therefore why the normal depreciation should not be reduced from 15% to 10%. In response the assessee submitted the nature and purpose of electrical installations and explained that these installations were made at the factory and not the office premises. It was explained that these electrical installations were made to operate and run the factory along with machineries installed at the factory unit. Accordingly the electrical installations formed an integral part of plant and machinery. The assessee placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs Oswal Woollen Mills Limited reported in 289 ITR 261 (P&H) wherein the assessee in that case had claimed depreciation at 25% on electrical installations in the unit treating it to be 'plant and machinery'. The AO however treated the same as 'office equipment' and allowed depreciation to the extent of 15%. On appeal the High Court held that the electrical installation was in the unit and therefore formed an integral part of 'plant and machinery' and allowed depreciation at 25% as claimed by the assessee. The assessee also stated that similar views were expressed in the following cases :-

a) CIT vs Metalman Auto Pvt Ltd reported in 11 taxmann.com 51 (P&H HC)

- b) CIT vs Subrata Dutta Choudhary reported in 197 Taxman 71 (P&H )  
c) Co-ordinate Bench of Chennai Tribunal in the case of Mallow International vs DCIT in ITA No. 564/Mds/2010 dated 9.7.2010.

The Id AO did not heed to the contentions of the assessee and reduced the claim of depreciation from 15% to 10% in the assessment.

4.2. The Id CITA granted relief to the assessee by observing as under:-

*“6.2. I have carefully considered the AR’s submissions and perused the impugned order. From the details placed before me, I find that no material has been brought on record by the AO to substantiate his finding that electrical installations were located in the office premises so as to form part of the WDV of the block of building or furniture & fixture. On the contrary it is the assessee’s plea that the electrical installations were integral part of the plant & machineries installed at the factory. The electrical installations inter alia included items such as transformers, electrical panels, HT wirings etc. which were necessary for operating plant & machineries installed at the factory. Without the aid and use of the supporting electrical installations, the assessee’s factory could not have been made operational. The electrical installations thus intrinsically related with the plant & machinery and could not be considered in isolation. From the impugned order I find that no material or evidence was gathered by the AO to dispel the assessee’s averments not the AO brought on record any positive material to substantiate his finding that electrical installations were in the nature of building or furniture & fixtures. Moreover, I find that substantial part of the claim for depreciation on electrical installations pertained to WDV of the electrical installations brought forward from the earlier year. I do not find in the earlier years’ assessments the claim for depreciation was reduced on the ground that it did not qualify for depreciation at the general rate applicable to plant & machinery. On the contrary the AR furnished evidence to show that in the earlier year the depreciation was allowed at the rate of 15% being the general rate applicable to plant & machineries. In the circumstances, I find that if in the earlier years, the character of the depreciable asset was accepted by the Department to be plant & machinery eligible for depreciation at general rate of 15% then in later year the AO could not change the character and or category of the depreciable asset and reduce the permissible rate to 10%. I further find that the assessee’s claim for depreciation in respect of electrical installations is supported by the judgments of the Punjab & Hariyana High Court in the case of CIT vs. Oswal Wollen Mills Limited (289 ITR 261), CIT vs. Metalman Auto Pvt. Ltd. (11 taxmann. Com 51) & CIT vs. Subrata Dutta Choudhary (197 Taxman 71). Since the AO has not brought on record any material to the contrary, following the ratio laid down in these directions, I direct the AO to allow the depreciation at a higher rate of 15% in respect of electrical*

*installations and delete the disallowance of Rs. 4,02,157/-. [Ground Nos. 5 & 6 are allowed.]”*

4.3. Aggrieved, the revenue is in appeal before us on the following ground:-

*3. Excess Depreciation claimed @ 15% on office equipment is restricted to 10% and disallowed @ 5%.*

4.4. We have heard the rival submissions. We find that the Id CITA had given a categorical finding that the electrical installations were integral part of plant and machinery installed at the factory and that the electrical installations inter alia included items such as transformers, electrical panels, HT wirings etc which were necessary for operating plant and machineries installed at the factory. He further held that without the aid and use of supporting electrical installations, the assessee's factory could not have become operational. These findings are not controverted by the revenue before us. Hence we do not find any infirmity in the order of the Id CITA in this regard. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

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

**Order pronounced in the Court on 23.03.2018**

Sd/-  
[A.T. Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 23.03.2018

SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-10(1), Kolkata, P-7, Chowringhee Square, 3<sup>rd</sup> Floor, Kolkata-700069.
2. M/s Maa Amba Infrastructure Pvt. Ltd., B-401, 4<sup>th</sup> Floor, City Centre, Salt Lake City, Kolkata-700064.
3. C.I.T(A)- , Kolkata
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches