

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री एस जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.857/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2008-09

The Asst. Commissioner of –  
Income Tax,  
Corporate Circle-4(2),  
Chennai-600 034.

**Vs.** M/s.New Tirupur Area –  
Development -  
Corporation Ltd.,  
Poly House Towers, 1<sup>st</sup> Floor  
(Spic Annexe Building), No.86,  
Mount Road, Guindy,  
Chennai-600 032.

(अपीलार्थी/Appellant)

**[PAN: AAACN 3562 H]**  
(प्रत्यर्थी/Respondent)

Department by  
Assessee by

: Mr.Srinivasa Rao, CIT  
: Mr.Saroj Kumar Parida, Adv.

सुनवाई की तारीख/Date of Hearing

: 29.05.2018

घोषणा की तारीख /

Date of Pronouncement

: 29.05.2018

**आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed this appeal against the order of the Commissioner of  
Income Tax (Appeals)-8, Chennai, in ITA No.16/2014-15 dated 30.01.2017  
for the AY 2008-09.

2. While making the assessment for the AY 2008-09 in the case of New Tirupur Area Development Corporation Ltd., the assessee, the AO disallowed the assessee's claim of 100% depreciation on factory building and machinery, interest on re-structuring of loan and sewage connection charges. Aggrieved, the assessee filed an appeal before the Ld.CIT (A), who allowed the appeal on the above issues. Aggrieved on the order of the Ld.CIT(A), the Revenue filed this appeal with the following grounds:

1. The order of the CIT(A) is contrary to law and facts of the case.

2. The CIT(A) erred in deleting the disallowance on the claim of depreciation of Rs.62,49,73,896/- on factory buildings and thereby erred in allowing 100% depreciation on factory buildings instead of 10% as allowed by the AO.

2.1. The CIT(A) erred in not appreciating the fact that the assessee failed to furnish copy of buildings plan and purpose for which building is being utilized in support of its claim of 100% depreciation on buildings and hence the AO has rightly restricted the above claim to 10% as applicable to buildings, covered by sub-items I(2) of New Appendix I of Rule 5 of Income Tax Rules.

2.2. The CIT(A) erred in not appreciating that the burden was on the assessee to produce all the evidence in support of the claims made in the Return of income once the case was taken up for scrutiny by the Department and the assessee failed to discharge its burden. Hence the CIT(A) ought to have upheld the disallowance on the claim of depreciation on the factory buildings of Rs.62,49,73,896/- made by the AO.

3. The CIT(A) erred in deleting the disallowance on the claim of depreciation of Rs.3,06,55,63,262/- on machinery made by the AO and thereby erred in allowing 100% depreciation on machinery instead of 15% as allowed by the AO.

3.1. The CIT(A) erred in not appreciating the fact that the assessee failed to furnish item-wise bifurcation of machinery, electrical installations and pipelines related to distribution of water to customers from storage facility in support of its claim of 100% depreciation on machinery and hence the AO has rightly restricted the above claim to 15% as applicable to buildings covered by sub-items 111(1) of New Appendix I of Rule 5 of Income Tax Rules.

4. The CIT(A) erred in deleting the addition, towards claim of interest on restructuring of loan of Rs.10,78,93,890/-.

4.1. The CIT(A) erred in not appreciating that interest payments amounting to Rs.10,78,93,890/- pertaining to loan taken by the assessee from lenders was written back in the year under consideration as a result of consent terms arrived at between the assessee and the lenders and hence the same is liable to be taxed u/s.28. Therefore, the impugned amount being excess interest resulting in over-statement of loss by the assessee to the extent of Rs.10,78,93,890/- has been rightly added back to the income of the assessee by the AO.

5. The CIT(A) erred in deleting the disallowance on the claim of expenditure incurred in connection with sewage connection work of Rs.46,36,370/-.

5.1. The CIT(A) erred in not appreciating the fact that the assessee failed to establish the nexus between the utilization of huge borrowed funds/share application money and expenditure incurred in connection with the sewage connection work. Hence the CIT(A) ought to have upheld the action of the AO in disallowing the amount of Rs.46,36,370/- being 11% of borrowed loan.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer restored.

3. The Ld.DR submitted that the assessee is entitled for 100 % depreciation on certain assets only. Inviting our attention to the Assessment Order, he submitted that the AO issued a notice u/s.142 requiring the assessee to justify the 100% depreciation claim as under:

*“On verification of records, it is noticed that the assessee company is claiming 100% depreciation of Rs.69,44,15,439/- on Factory building. The annual accounts disclosed that the factory building for which 100% depreciation was claimed includes administrative and other buildings. As per New Appendix-I, under Rule-5 of Income Tax Rules, 1962 (effective for AY 2006-07) buildings acquired on or after 1<sup>st</sup> day of September, 2002 for installing Machinery and Plant forming part of supply system or water treatment system and which is put into use for the purpose of business of providing infrastructure facilities under Clause (1) of Sub Section (4) of Section 80IA is alone eligible for 100% depreciation.*

*In this connection, you are requested to furnish the copy of building plan and the purpose for which building is being utilized. Justify your claim of 100% depreciation on buildings with supporting evidences and explanations. Please note failure to furnish satisfactory explanation along with supporting evidences your claim of 100% depreciation on building will be restricted to 10%.”*

In spite of such notice, the assessee has not furnished the relevant details viz., copy of building plan, purpose for which the building is utilized in support of its claim on buildings, furnish item-wise bifurcation of machinery, electrical installations and pipelines related to distribution of water to customers from storage facility in support of its claim of 100% depreciation on machinery. The Onus is on the assessee to produce all evidences in support of its claims. The assessee has failed to discharge its burden. Therefore, the Ld.CIT(A) erred in allowing the assessee 's claim of 100% depreciation on buildings and machinery. Per contra, the Ld.AR supported the order of the Ld.CIT(A).

3.1. We heard the rival submissions and gone through the relevant material. It is clear from the Assessment Order that the AO has required the assessee to place the relevant material before him for claiming 100% depreciation on the impugned items. Though, the assessee made an attempt to explain them, it has not pointed out with facts, figures, locations, items, etc., for due consideration of the claims. In the facts and circumstances, we deem it fit to restore these matters to the AO for a fresh examination and due decision in accordance with law. The AO shall afford adequate opportunity to the assessee to place the relevant material in support of its claim before deciding these issues. The corresponding grounds of the Revenue are treated as partly allowed for statistical purposes.

4. With regard to the disallowance made on re-structuring of the loan, the Ld.DR submitted that the AO noticed that all the lenders of the assessee had approved restructuring proposal for reduction in interest rate at 11% w.e.f. 01.11.2006 and rescheduling the repayment of principal so as to commence from 01.04.2011. Consequent to restructuring proposal, an interest of Rs.19,07,35,500/- (previous year NIL) was recognized as interest paid in advance as on 31.03.2008, which would be adjusted against future interest payment to those lenders. The assessee had adjusted the excess payment made in the earlier years in schedule 10 of Profit and loss account for Rs.8,28,41,610/- representing the reversal during the year towards the excess interest paid to the lenders for the period from 01.11.2006 to 31.03.2007. But, the assessee had not made similar reversal in profit and loss account for 2007-

08 relevant to AY 2008-09 for the excess interest of Rs.10,78,93,890/- (Rs.19,07,35,500/- - Rs.8,28,41,610/-) paid to the lenders. Consequently, the loss shown by the assessee is overstated to the extent of Rs.10,78,93,890/-. In this regard, the Ld.DR submitted that the CIT(A) erred in not appreciating that the interest payments at Rs.10,78,93,890/- pertaining to the loan taken by the assessee from lenders was written back in the year under consideration as a result of consent terms arrived at between the assessee and the lenders and hence the same is liable to be taxed u/s.28. Therefore, the impugned amount being excess interest resulting in over-statement of loss by the assessee to the extent of Rs.10,78,93,890/- has been rightly added back to the income of the assessee by the AO. Per contra, Id.DR supported the order of the Ld.CIT(A).

4.1 We heard the rival submissions and find that this issue has not been properly appreciated and hence, we deem it to fit to restore these matters to the AO for a fresh examination and due decision in accordance with law. The AO shall afford adequate opportunity to the assessee to place the relevant material in support of its claim before deciding the issue. The corresponding grounds of the Revenue are treated as partly allowed for statistical purposes.

5. With regard to the disallowance on the claim of expenditure incurred in connection with sewage connection work, the Ld. DR submitted that the CIT(A) erred in not appreciating the fact that the assessee failed to establish the nexus between the utilization of huge borrowed funds/share application money and expenditure incurred in connection with the sewage connection work.

Hence, the CIT(A) ought to have upheld the action of the AO in disallowing Rs.46,36,370/- being 11% of borrowed loan. Per contra, Ld.AR relied on the order of the Ld.CIT(A).

5.1 We heard the rival submissions. Since the substantial issues are remitted back, supra, for fresh examination and due decision, we deem it fit to restore this issue also to the AO for a fresh examination and due decision after affording adequate opportunity to the assessee. The corresponding grounds of the revenue are treated as partly allowed for statistical purposes.

6. In the result, the appeal filed by the Revenue is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on May 29, 2018, at Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: May 29, 2018.

TLN

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

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(एस. जयरामन)

**(S. JAYARAMAN)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF