

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “C” BENCH**

**(BEFORE SHRI WASEEM AHMED, ACCOUNTANT  
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2735/AHD/2014  
(Assessment Year: 2011-12)**

<b>M/s. Madhu Machines &amp; Systems Pvt. Ltd. A, 4/5, Anurag, Ganeshkrupa Society, Chikuwadi, Jetalapur Road, Baroda- 390007</b>	<b>V/S</b>	<b>Income Tax Officer, Ward- 4 (1), Baroda</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAFCM7042Q**

**Appellant by : Smt. Urvashi Shodhan, AR  
Respondent by : Dy. Jayant Jhaveri, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 09 -05-2018  
Date of Pronouncement : 21-05-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-III, Baroda dated 19.08.2014 pertaining to A.Y. 2011-12 and following grounds have been taken:

1. *Ld. CIT (A) erred in law and on facts in confirming disallowance of Rs. 13,28,969/- being commission expenses. Ld. CIT (A) ought to have deleted the same as payment of commission was made by account payee cheques, payee has shown same in their return of income and percentage of commission is also very meager as compared to turnover of the appellant. It be so held now.*
  2. *Ld. CIT (A) erred in law in confirming action of AO in making disallowance of depreciation of Rs. 2,37,135/- in respect of plant & machinery given on lease to M/s Zahoranksy Mould & Machinery Pvt. Ltd. Ld. CIT (A) ought to have deleted the disallowance as conditions mentioned in section 32 are duly complied by the appellant. It be so held now.*
  3. *Ld. CIT (A) erred in confirming action of the AO in making disallowance of an amount of Rs. 7,50,000/- being expenditure on payment of consultancy charges to Devang M Shah HUF.*
  4. *Ld. CIT (A) erred in law and on facts in confirming disallowance of Rs. 73,4837- on depreciation claimed on inverters connected to computer system. Ld. CIT (A) ought to have allowed the depreciation @ 60% as inverter is integrated part of computer system and used in conjunction of computer system. It be so held now.*
  5. *Appellant craves leave to add, alter, amend or delete any of the above grounds at the time of hearing of this appeal.*
2. The appellant company is engaged in the business of manufacturing, indenting, supplying and processing of all kinds of plastic processing, reprocessing recycling plants & other ancillary equipment. In respect of its business, the appellant company had maintained books of accounts systematically and regularly in accordance with the provisions of Income Tax Act and similar accounts are duly audited. For Assessment Year 2011-12, the appellant company e-filed its return of income on 23/09/2011 declaring total income of Rs. 18,25,800/-. A revised return of income was filed on 12/12/2011 declaring total income of Rs. 20,73,830/-. The said return was processed u/s. 143(1) accepting the income as returned and thereafter case was selected for scrutiny.

3. During the course of assessment proceedings, the A.O. raised query regarding the expenditure on account of payment of commission amounting to Rs. 13,45,678/-. The appellant filed details of such commission expenditure and also furnished copies of the credit notes issued. In order to verify the contents, the A.O. also recorded a statement of three of the parties to whom commission was paid and to this effect but assessee could not cross examine the person whose statements were recorded and made addition of Rs. 13,28,969/-.
4. Apart from this, A.O. also disallowed depreciation of Rs. 2,37,135/- on Plant & Machinery given on lease.
5. During the course of assessment proceedings, Assessing Officer also confirmed the consultancy fee of Rs. 7,50,000/- paid to Devan M Shah (HUF).
6. Appellant also claimed depreciation of Rs. 73,483/- on inverters connected to computer which according to assessee is part of computer because in the absence of inverters connected to computers cannot be borrowed and disallowed depreciation of Rs. 73,483/-.
7. Against the said addition, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the appellant.
8. We have gone through the relevant record in the impugned order. So far disallowance of commission is concerned; ld. A.O. was recorded statement of three persons namely Smt. Chintal Shah, Smt. Gayatri Mode & Shri Gautan Mistry. They made a statement before the ld. A.O. that they have not performed any work for the appellant company but why their names have been

mentioned as recipient of commission that company must be knowing the reason. However, they have not received any payment from the company. But appellant was not given chance to cross examine the above said three persons. In the interest of justice, we remand this issue back to the file of the A.O. who will summon the above said three persons and will give a chance to cross examine these witnesses to the appellant and thereafter will decide the matter as per law.

9. So far confirming disallowance of depreciation of Rs. 2,37,135/- on plant and machinery by the Id. CIT(A) is concerned, there is no dispute over the fact that the appellant company owned machinery which was purchased from PLM International Company, the appellant company has leased the said machinery to M/s. Zahoranksy Mould & Machines Pvt. Ltd., Coimbatore for a monthly rent of Rs. 1 lac. Thus, the undisputed facts remains that during the year under appeal , the appellant had owned the machinery and the same was used for its business by leasing the same on hire. Thus, the condition prescribed u/s. 32 of the Income Tax Act i.e. ownership of the machinery and user of the same for the purpose of the business are fully satisfied.
10. In view of the above discussion, we allow this ground of appeal.
11. So far confirming of disallowance of Rs. 7,50,000/- being consultancy charges paid to Shri Devang M. Shah (HUF) is concerned, this amount was paid for 2k Laser 341B project which includes Product Design, Raw Material selection, Mould Design, Machinery & mould Manufacturer, process setting, Training to personnel & other relates services and Mr. Devang M Shah is a qualified engineer. Therefore, in our considered opinion, expenses was incurred wholly and exclusively for the purpose of its business.

12. In view of the above fact, we allow this ground of appeal.

13. So far confirming of disallowance of depreciation of Rs. 73,483/- on inverters connected to computer is concerned, As per the definition of block of assets as prescribed in Income Tax Rule, 1962, New Appendix 1, Computers including computer software means any compute program recorded on any disc, tape, perforated media or other information storage device is eligible depreciation @ 60% but Invertors which are connected to computer. Therefore, we are not incline to give relief to the appelliant. Therefore, this ground of appeal is dismissed.

14. In the result, appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on	21- 05- 2018
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 21/05/2018

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad