

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEEN A. PILLAI, JUDICIAL MEMBER**

ITA No.2412/Del/2016
Assessment Year: 2009-10

DCIT Circle . 5 (1) New Delhi	Vs	M/s. Bio Red Laboratories India Pvt. Ltd. Plot No.1270, Lal Dora, Kapashera Village, New Opp. Fun & Food Village, New Delhi-110037 PAN AAACB3202A
(APPELLANT)		(RESPONDENT)

Revenue by	Sh. Vijay Kumar Jiiwani, Sr. DR
Assessee by	Sh. Manish Bhatia, CA Sh. Kanwal Preet Khosla, CA

Date of hearing:	26/07/2018
Date of Pronouncement:	30/07/2018

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the revenue is directed against the order dated 29.01.2016 of the CIT (A)-2, New Delhi relating to A. Y. 2009-10.
2. The only effective ground raised by the revenue reads as under :-

“On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting an addition of Rs.2,06,43,530/- on account of disallowance of depreciation on rental assets ignoring the fact that the assessee company is not the actual user of the machinery/ equipments which were hired out, depreciation cannot be allowed to the assessee company.”

3. Facts of the case, in brief, are that the assessee company is the wholly owned subsidiary of Bio Rad Laboratories Inc, which is based in California USA. The company is a world leader in the supply of instruments, reagents and chemical, which are primarily used in the field of science, technology, biotechnology, research and medicine. It filed its return of income on 30.09.2009 declaring total income of Rs.13,69,60,660/-. During the course of assessment proceedings the Assessing Officer observed from the depreciation table filed alongwith return of income that the assessee company has claimed depreciation of Rs.2,06,43,530/-on rented asset. He, therefore, asked the assessee to explain as to why depreciation claimed on the rented assets should not be disallowed as per provisions of the IT Act. Rejecting the various explanations given by the assessee and following the orders for the preceding assessment years, the Assessing Officer disallowed the claimed of depreciation of Rs.2,06,43,530/-on account of assets given on hire purchase i.e. depreciation on rented assets.

4. In appeal, the Ld. CIT(A) following his order of A. Y. 2008-09 allowed claim made by the assessee.

5. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee, at the outset, filed the copy of the order of the Tribunal in assessee's own case vide consolidated order for A.

Y. 2002-03 to 2008-09 order dated 19.09.2016 and submitted that identical issue had come up before the Tribunal in assessee's own case. The Tribunal has decided the issue in favour of the assessee and the appeal filed by the revenue has been dismissed. Therefore, the ground raised by the revenue should be dismissed.

7. The Ld. DR on the other hand conceded that this ground has been decided against the revenue by the Tribunal in assessee's own case from A. Y. 2003-04 to 2008-09 onwards.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer disallowed the claim of depreciation on rented assets which was deleted by the CIT (A) by following his earlier order. We find identical issue had come up before the Tribunal in assessee's own case in preceding assessment years. We find the Tribunal on the ITA No.3330/Del/2010 for A. Y. 2003-04 in the consolidated order dated 19.09.2016 has decided the issue in favour of the assessee by observing as under :-

"18. We have carefully considered the rival contentions. The coordinate bench has considered the identical issue wherein depreciation was allowed on machineries which are installed at the manufacturing premises of another company from whom assessee purchases the packed fruit juices. The coordinate bench in ITA No.482/Del/2009 dated 18.02.2010 vide para No.5 to 7 has held as under :-

5. *We have considered the rival submissions. A perusal of the decision of Hon'ble Supreme Court in the case of Liquidators of Pursa Ltd. shows that the Hon'ble Supreme Court therein has clarified the meaning of the words "used for the purpose of business" as was available in Section 10(2) (iv) of the IT Act, 1922 the I. T. A. term which is used in Section 32 of the IT Act, 1961. The Hon'ble Supreme Court has held that the said term means that the machinery and plant is used for the purpose of enabling the owner to carry on the business and earn profit in the business With this meaning in mind if the facts in the case are seen, it is noticed that the assessee is in the business of trading in packed fruit juices. As per the assessee s product supply agreement entered into by the assessee with Dynamix right from 18th Feb 1999. it is noticed that Dynamix is to manufacture fruit juices as per the*

requirement of the assessee and it is to be packed in accordance with the packing instructions and the packing material and design have to be approved by the assessee. The manufacture and the packing are to be as per the specifications and quality standards decided by the assess. The trademark belongs fully to the assessee. Even the raw material and other inputs as are required for the manufacture of the fruit juices are to be sourced from the sources and as per the specification approved by the assessee. Thus, a perusal of the product supply agreement shows that Dynamix is manufacturing the fruit juices for and on behalf of the assessee. Dynamix has no say in the method of manufacture, product mix, sourcing of raw material quality of raw material, method of packing, design of packing etc. It is not a case where Dynamix manufacture fruit juices and the assessee is a dealer for the fruit juice manufactured by Dynamix. A perusal of the equipment Supply Agreement between the assessee and the Dynamix clearly shows that it manufactures the fruit juices as per the requirement of the assessee and as agreed between the assessee and Dynamix in the Product Supply Agreement, the Dynamix required the assessee to provide the equipments and wanted to place a responsibility on the assessee so that the assessee does not end or terminate the agreement with Dynamix after Dynamix invest as substantial amount in the machinery which would remain the liability in the hands of Dynamix if the assessee back out the agreement. It is noticed that the assessee as per the request of Dynamix has provided the machinery for the purpose of manufacturing the products under the Product Supply Agreement. A perusal of the agreement also shows that it is clearly understood that the machinery would belong to the assessee and not the Dynamix and Dynamix had no charge or claim over the machinery. Even the servicing, maintenance and spare parts of the machinery was to be in done in the presence of the representative of the assessee even though the cost for the same was to be borne by Dynamix. Its has also been clearly understood between the parties that the Dynamix cannot use the machinery provided by the assessee for the purpose other than manufacturing products as agreed upon in the Product Supply Agreement. In these circumstances, as it is noticed that the machinery has been provided by the assessee to Dynamix for the purpose of manufacturing the product of the assessee it would have to be held that the machinery has been used for the purpose of the business of the assessee and consequently the assessee would be entitled for claiming the depreciation.

6. In respect of the depreciation in regard to the Visi Refrigerators, it is noticed that these refrigerators have been installed at the premises of the dealers of the products dealt with hr the assessee. Obviously, the product dealt in by the assessee are perishable commodities which have shelf life and which have to be maintained between a specific temperature. The AO. has not pointed out anything to show that the refrigerators were not used for the business of the assessee. In fact the order of the A.O. specified that the refrigerators were not proved to have been put to business use during the relevant previous year. The fact that these refrigerators were at the various outlets all over India as recorded by the A.O. itself shows that the refrigerators have been put to use as these refrigerators are at the premises of the dealers of the product of the assessee and consequently the assessee would be entitled to the claim of depreciation.

7. In the appeal of the revenue in I.T.A. No.810/Del/2009 , identical issue has been raised and it is noticed that the CIT (A) has relied upon his decision for the Assessment Year2004-05 for deleting the disallowance of depreciation. As we have held that the decision of the Ld. CIT (A) to the issue in I. T. A No.482/Del/2009 is on a right footing, the same finding would apply to this appeal also in I. T. A.

No.810/Del/2009.

19. *In view of the above and following the decision of coordinate bench, we do not find any infirmity in the order of the ld CIT(A) in allowing the claim of deduction of the depreciation to the assessee as assessee owns the assets and also uses it for the purposes of its business. The revenue's another aspect of this ground is that ld CIT(A) has admitted the affidavit of the assessee before him. We have perused the order of the ld CIT(A) wherein the affidavit only says that the assessee has not received any rent or installment on account of these machines. We reject the argument of the revenue as the information in the form audited financial statement is available on record as assessee has not shown any rental income in its profit and loss account and further in its fixed assets schedule it has shown the rental assets. In view of this ground No. 2 of the appeal of the revenue is dismissed."*

10. Following the above decision, the Tribunal in the consolidated order has also allowed the depreciation on rented assets for other years. In view of the decision of the Tribunal in assessee's own case in the immediately preceding assessment year and in absence of any distinguishable features we do not find any infirmity in the order of the CIT(A) allowing depreciation on rented assets. We, therefore, upheld the same and the ground raised by the revenue is dismissed.

11. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 30.07.2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

NEHA

Date:- 30.07.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.07.2018
Date on which the typed draft is placed before the dictating Member	27.07.2018
Date on which the approved draft comes to the Sr.PS/PS	30.07.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	30.07.2018
Date on which the fair order comes back to the Sr. PS/ PS	30.07.2018
Date on which the final order is uploaded on the website of ITAT	30.07.2018
Date on which the file goes to the Bench Clerk	30.07.2018
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

