

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.1136/Kol/2017
Assessment Year :2013-14

Income Tax Officer, Ward-15(3), Aayakar Bhawan, Poorva, 110, Shanti Palli, Kolkata- 107	V/s.	M/s Indian Jute Machinery Research &Development, 14 Dr. Mohd. Ishaque Road, Kolkaata-16 [PAN No.AABCI 9607 D]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S. Dasgupta, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Smt. Sikha Agarwal, ACA
सुनवाई की तारीख/Date of Hearing	23-07-2018
घोषणा की तारीख/Date of Pronouncement	31-07-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2013-14 arises from Commissioner of Income Tax (Appeals)-5, Kolkata's order dated 31.03.2017 passed in case No.524/CIT(A)-5/Wd-15(3)/150-16 reversing Assessing Officer's action disallowing assessee's depreciation claim of ₹2,06,05,390/-, in assessment order dated 04.03.2016 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance pleaded in the instant appeal is that CIT(A) has erred in law as well as on facts in deleting the impugned depreciation disallowance of ₹2,06,05,390/-. Learned Addl. CIT-DR invites our attention to CIT(A)'s order deleting the impugned addition as follows:-

"I have perused the assessment order and the submission of the A/R. The reason given by the AO for disallowance of depreciation is that the claim of depreciation this year has its base in the previous year relevant to AY 2012-13 being prior to the current. AY 2013-14. There is no other reason by the AO for the said disallowance

has however given some details of WIP capitalized last year and the disallowance of depreciation last year on the ground that the asset was not put to use. In my view, that happened last year is not relevant at all. The claim of depreciation this year has solely to depend on whether the asset was 'put to use' in the current year or not. As the assessee has claimed depreciation, presumption is that the asset was put to use. This presumption has not been even questioned by the AO, who has made an irrelevant observation of WIP in the last year. I do not see any basis for the AO's order on the point. This disallowance for depreciation is arbitrary. The ground is allowed."

It is sufficiently clear from the CIT(A)'s above extracted discussion that main issue herein is that of relevant assets having been 'put to use' or not. We sought to know from both the learned representatives as to whether the very issue has arisen in earlier assessment year or not. We are informed that instant taxpayer's appeal for said preceding assessment year raising the very issue is pending before the CIT(A)-3 Kolkata for hearing on 23.10.2018. Learned counsel representing the assessee fails to dispute that the very issue *qua* the instant depreciation claim involving same assets do have ramifications in the impugned assessment year as well. We therefore restore the instant lis back to the CIT(A) for a combined disposal of the instant depreciation issue as well as that in the proceeding assessment year. Learned Departmental Representative shall ensure that assessee's both appeal in these two assessment years are clubbed together at the CIT(A) level in the meantime as per rules. The Revenue succeeds in its sole substantive ground for statistical purposes.

3. This Revenue's appeal is allowed for statistical purpose.

Order pronounced in the open court 31/07/2018

Sd/-
(लेखा सदस्य)
(M.Balaganesh)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 31/07/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-15(3), Aayakar Bhawan, Poorva, 110, Shanti Palli, Kol-107
2. प्रत्यर्थी/Respondent-M/s Indian Jute Machinery Research & Development, 14 Dr. Mohd. shaque Rd. Kol-16
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता ।