

आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 257/Mum/2014

(निर्धारण वर्ष / Assessment Year 2002-03)

The Asst. Commissioner of Income Tax, 6 th Floor, Room No. 658, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Echjay Industries Pvt. Ltd. 83, Bajaj Bhavan, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACE1157B		

अपीलार्थी की ओर से / Appellant by	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	17-09-2018
घोषणा की तारीख / Date of pronouncement :	28-09-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-38, Mumbai [in short CIT(A)], in appeal No. CIT(A)-38/IT-381/2011-12, dated 09.10.2013. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle 45, Mumbai (in short 'DCIT/ AO') for the A.Y. 2002-03 vide order dated 05.12.2011 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of Revenue is against the order of CIT(A) directing the AO to allow depreciation on plant and machinery without reducing the compensation received. For this Revenue has raised the following ground No. 1: -

"1. On the facts and in the circumstances of the case and in law, the Id CIT(A) erred in directing to allow the depreciation on plant and machinery without reducing the amount of compensation received by the assessee in AY 1999-2000 of ₹ 16,05,29,977/- (being initial year), whereas the compensation received by the assessee was in the nature of capital receipts and liable to be deducted from the WDV of plant & machinery for charging depreciation as per Income Tax Act/ Rule and the issue for AY 1999-2000 yet to be decided by the ITAT."

3. Briefly stated facts are that the assessee is engaged in the business of engineering products and exports. The AO during the course of assessment proceedings noted that during the relevant AY 1999-2000, the assessee received compensation of DM 7 Million equivalent to sum of ₹ 17,58,40,000/- from German supplier by way of compensation i.e. from M/s Thyssen Industries AG. The assessee claimed during the assessment year 1999-2000 that this is Revenue's receipt and assessee filed a note No. 19 of its accounts which reads as under: -

"19. The company received a compensation of DM 7(seven) Million equivalent to ₹ 17,58,40,000/- from M/s Thyssen Industries AG during the year by way of compensation in relation to settlement of disputes in supply, performance, erection and



commissioning of an Axial Closed Die Rolling line. The amount being capital in nature has been appropriated as such in accounts. As a matter of abundant caution, the Company has written back expenses amounting to ₹ 1,53,12,023/- by way of Travelling and Legal Expenses incurred by the Company during the Financial years 1996-97, 1997-98 and the current year in connection with the pursuing the dispute, though the company is of the opinion that irrespective of the nature of the claim received being capital, such expenses as and when made in pursuing the claim were revenue in nature."

4. However, the AO disallowed the claim of assessee regularly and in this year he disallowed by observing in para 6 as under: -

"6. The brief facts of the case are that relevant to AY 1999-2000, the assessee received a compensation of DM7 Million from the suppliers of the plant and machinery being the Axial Closed Die Rolling Line upon settlement of disputes in supply, performance, erection and commissioning of the said plant and machineries. Out of this amount, it was held in the assessment year 1999-2000 that a sum of ₹ 16,05,29,977/- received on capital account went to reduce the cost of the plant. Accordingly, WDV of the plant and the machineries as at 31.03.1999 was reduced by this amount and lower depreciation allowed accordingly. The assessee challenged the assessment order in appeal before the Ld. CIT(A), who in turn, decided the issue in favour of the assessee. The decision of the Ld.



CIT(A) was not accepted by the department and the same was challenged before the Hon'ble ITAT. It is evident from the record that the Hon'ble ITAT has not disposed off the appeal pending before it for AY 1999-2000. Therefore, to keep the issue alive, it is necessary to restrict the depreciation claimed by the assessee at ₹ 2,92,09,742/- to the extent of ₹ 1,23,86,490/- only as determined by the Assessing Officer in the original assessment proceedings under section 143(3) of the IT Act, 1961. Penalty proceedings under section 271(1)(c) of the Act are hereby initiated separately for furnishing inaccurate particulars and concealment of income."

5. The CIT(A) following his predecessor's order in earlier years, allowed the claim of the assessee vide Para 9.2 and 9.3 as under: -

"9.2 While allowing the claim of the appellant for the same assessment year i.e. AY 2002-03, the predecessor CIT(A) vide Para No 4.3 of his order has held as under:

4.3 I have carefully perused the facts pertaining to this issue and the reasons given by the AO for making the said disallowance out of depreciation. It has been noticed that this issue is of recurring nature right from A. V.1999-2000 onwards. The Assessing Officer has been consistently disallowing the depreciation pertaining to the amount of compensation which had been received by the appellant from the foreign supplier of



plant and machinery. The A.0 has been holding that the said compensation was on capital account and hence, the same was required to be reduced from the WDV of plant and machinery. However, my learned predecessor CIT(A) has given a finding of facts on this issue and held that the WDV of plant cannot be reduced by the amount of said compensation because the said compensation was not paid in lieu of the plant and machinery. The learned CIT(A) had held that the said compensation was merely paid because the plant and machinery supplied earlier was defective in nature and the said amount was paid to compensate the appellant for the losses incurred due to the said defective plant. As a result, in all the earlier appeals, the matter has been decided in favour of the appellant. There is no change of facts on this issue in the current year as compared to the earlier assessment year. Therefore, without repeating the detailed reasons given by the earlier CIT(A) on this issue, the matter is hereby decided in favour of the appellant for the current year also. The A. 0 is directed not to reduce any part of the compensation from the WDV of assets while computing the eligible depreciation allowance to the appellant for the current year. As a result, this ground of appeal is allowed.



9.3 Since it has already been decided by learned predecessor that the compensation paid for the defective nature of Plant & Machinery supplied cannot go to reduce the WDV. similar view is continued to be held. For the reasons mentioned by my predecessor, the ground of appeal raised by the appellant on this issue is allowed."

6. The learned Sr. Departmental Representative, now before us relied on the assessment order. The assessee choose not to appear before the Tribunal from many hearings and on 12.04.2018, Tribunal recorded the fact as under: -

"12.04.18

Ld. DR is directed to find out from the AO about the outcome of appeal filed by AO for AY 1999-2000. Hearing is adjourned to 17.07.2018. In case the AO does not supply necessary information to Departmental Representative, the matter will be decided on available material. Ld Departmental Representative is directed to inform the AO a copy of letter should be sent to the principle CIT (PCIT). Both parties informed.

Sd

sd

(PS)

(RJ)."

7. We find from the reply of the learned Counsel for the assessee dated 09.04.2018 that the Tribunal has set aside the assessments for AY 2001-02 and 2000-01 and for this the findings in Para reads as under: -



“3. Appeal for the AY 2001-02 and 2002-03 came up for hearing before the Tribunal. In both the years, the Tribunal set aside the issue to the files of the AO to work out depreciation afresh. No order has yet been passed for the AY 2001-02. As far as the original assessment.e on the reduced WDV on account of compensation received. On appeal the CIT(A) has held the issue again in favour of the appellant (second innings of appeal). The Department has come up in appeal on the same issue again. ”

8. The assessee has also enclosed the copy of Tribunals order for AY 2000-01 dated 15.12.2008, wherein Tribunal has remanded this issue back to the file of the AO with the following directions: -

“3. The issue in ground No 1 & 2 raised by the Revenue is against the determination of the WDV for the year under consideration and the allowance of depreciation on the said WDV. In view of the non-cooperation of the assessee in presenting the details the WDV for the year under consideration which in-turns is to be adopted for working the depreciation for the year cannot be determined. IN the interest of justice, we deem it fit to restore the issue back to the file of the Assessing Officer to determine the WDV for the year under consideration in line with the WDV determined for the preceding years and allow the claim of the assessee as per law. A reasonable opportunity of hearing to the assessee shall be afforded. Accordingly, ground



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Nos 1 & 2 raised by the Revenue are allowed for statistical purpose."

9. Exactly on similar directions, we also restore this issue back to the file of the Assessing Officer. The appeal of Revenue is allowed for statistical purposes.

10. **In the result, the appeal of Revenue is allowed for statistical purposes.**

Order pronounced in the open court on 28-09-2018.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-09-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai