

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "I-2": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.6664/Del./2015
Assessment Year 2011-12

TRL Riceland Pvt. Ltd. (Earlier Known as M/s Tilda Riceland Pvt. Ltd.) Eros Corporate Towers, Level-15, Nehru Place, New Delhi. AAACU0649N	vs.	DCIT Circle 25(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Satyen Sethi, Adv.
For Revenue :	Ms. Anchal Khandelwal, Sr. DR

Date of Hearing :	08.10.2018
Date of Pronouncement :	09.10.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of DCIT, Circle 25(2), New Delhi dated 21.10.2015 for AY

2011-12 u/s 143(3) r.w.s. 144C(4) of the I.T. Act, 1961 passed in pursuance to the order of DRP-2 dated 14.09.2015.

2. The assessee in the present appeal has challenged the orders of the authorities below i.e. AO/DRP in holding that the assessee was not entitled to depreciation of Rs. 26,47,038/-.

3. Briefly stated facts of the case are that the AO passed the draft assessment order u/s 143(3) r.w.s. 144C (1) of the I.T. Act dated 09.03.2015 in which the claim of excess depreciation was considered. The AO noted that in the computation of income assessee has claimed depreciation for the year at Rs. 14,12,22,588/-, whereas in the depreciation chart for the year as per Annexure 'C' of audit report, the figures stand at Rs. 13,85,75,550/-. It was observed that the excess claim of Rs. 26,47,038/- is not allowable. The DRP in their order considered the ground no. 9 which pertains to claim of depreciation by the assessee in its revised return. The DRP similarly found the claim of depreciation excessive. Same

ground was dismissed. The AO in the assessment order did not discuss the issue and completed the assessment.

4. Ld. Counsel for the assessee submitted that the assessee filed revised return of income on 29.09.2012 for assessment year under appeal, copy of which is filed at page 28 of the PB. PB-27 is tax audit report originally filed and PB-54 is revised statement of depreciation chart showing the higher figure as noted by the AO. He has submitted that since return of income was revised within time u/s 139(5) of the I.T. Act. Therefore, claim of assessee should be discussed in the impugned orders, as per law. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have considered the rival submissions and perused the material available on record.

6. The assessee in this case, filed return of income originally on 29.09.2011. The depreciation chart filed with the original return of income is filed at page 27 of the PB in which the depreciation figure as per tax audit report was Rs.

13,85,75,550/-. The assessee filed revised return of income on 29.09.2012 along with the revised depreciation chart, copy of which is filed at page 54 of the PB in which depreciation was claimed in a sum of Rs. 14,12,22,588/-.

7. According to Section 139(5) of the Act, if any person, having furnished a return of income under sub section (1) or in pursuance of notice issued under sub section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. The assessee filed the revised return of income claiming therein higher depreciation which is supported by revised depreciation chart prior to passing of the draft assessment order as well as before the expiry of one year from the end of the relevant assessment year, therefore, Ld. Counsel for the assessee rightly contended that revised return was filed within time allowed as per section 139(5) of the Act. The

observations in the draft order are, therefore, incorrect. Though the DRP noted that assessee filed the revised return of income but the issue is not decided as per revised return of income supported by revised depreciation chart. The AO in the impugned order did not discuss this issue. Therefore, the matter requires reconsideration at the level of the AO/TPO.

8. We, accordingly, set aside the orders of the authorities below and restore this issue to the file of AO/TPO with the direction to re-decide the issue as per revised return of income filed by the assessee, strictly in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER
Dated: 09.10.2018

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.10.2018
Date on which the typed draft is placed before the dictating Member	09.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	09.10.18
Date on which the fair order is placed before the Dictating Member for pronouncement	09.10.18
Date on which the fair order comes back to the Sr. PS/PS	09.10.18
Date on which the final order is uploaded on the website of ITAT	09.10.18
Date on which the file goes to the Bench Clerk	09.10.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	