

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM &amp; Shri S.S.Viswanethra Ravi, JM]

**ITA No.2457/Kol/2017**  
Assessment Year : **2014-15**

I.T.O., Ward-35 (3) Kolkata  (Appellant)	.	-versus-	Shri Laxmipat Surana Kolkata (PAN: AKQPS 7037 P) (Respondent)
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For the Appellant: Shri M.K.Biswas, Addl. CIT  
For the Respondent: Shri Anil Kochar, Advocate

Date of Hearing : 06.09.2018.

Date of Pronouncement : 24.10.2018.

**ORDER**

**PER J.SUDHAKAR REDDY, AM:**

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax-(A)-10, dated 24.09.2017 passed u/s 250 of the Income Tax Act, 1961 (the 'Act') relating to A.Y. 2014-15 on the following grounds :-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the depreciation to the assessee who is not the legal owner of the property.*

*2. The Ld. CIT(A) has erred in holding the view that the assessee is carrying on business in terms of explanation (1) to Section 32 of the I.T. Act, whereas the assessee is deriving income from a property to which he is a licensee only and as such the said explanation is not applicable in this case.*

*3. That, the appellant craves leave to make an addition, alteration, and modification of grounds at the appellate stage."*

2. After hearing rival contentions, we find that the issue in question is covered in favour of the assessee and against the revenue by the decision of 'A' Bench of the Tribunal in ITA No.142/Kol/2016 in assessee's own case and C.O.No.19/Kol/2016 order dated 10<sup>th</sup> November, 2017 as well as the decision of the Tribunal in ITA

No.2398/Kol/2016 for A.Y.2012-13 in assessee's own case. The Tribunal at para-5 of the order held as follows :-

*"5. We have heard the rival submissions. We find that the aforesaid issues under dispute are squarely covered by the order of this Tribunal in assessee's own case in I.T.A. No. 142/Kol/2016 for assessment year 2011-12 and C.O. No. 19/Kol/2016 for assessment year 2011-12 dated 10.11.2017 wherein it was held as under:*

*"6. We have heard the arguments of both the sides and also perused the relevant material available on record. The first contention raised by the learned DR is that the assessee having not claimed depreciation on the licenced property in the return of income, the Ld. CIT (A) was not justified to allow the claim of the assessee for depreciation which was not made either in the original return or even by filing revised return. We are unable to accept this contention of the learned DR. In our opinion, the restriction laid down by the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) which is relied upon by the Assessing Officer is applicable only at the assessments stage and the Ld. CIT (A) being an appellate authority is sufficiently empowered to entertain the claim made by the assessee for depreciation for the first time before him without even filing the revised return as clarified by the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) itself. Even the old circular of the CBDT dated 31.08.1965 relied upon by the learned DR was issued in a different context and the same therefore is not I.T.A. No. 142 & C.O. No. 19/Kol/2016 Sri Laxmipat Surana applicable in the present context. As regards the claim of the assessee for depreciation on merit, the learned DR has relied on the decision of Hon'ble Supreme Court in the case of [Mother Hospital Pvt. Ltd. vs CIT](#) rendered on March 2, 2017 wherein it was held that lessee under Explanation 1 to [Section 32](#) is entitled to depreciation on the cost of construction incurred by him but not on the cost incurred by the owner. As clarified by the learned counsel for the assessee in this regard, depreciation in the present case was claimed by the assessee only on the cost of construction incurred by him. We, therefore, find no infirmity in the impugned order of the Ld. CIT (A) allowing the claim of the assessee for depreciation on the cost of licenced property incurred by him and upholding his impugned order on this issue, we dismiss this appeal filed by the revenue.*

*7. At the time of hearing before us, the learned counsel for the assessee has not pressed the issues raised in the cross-objection filed by the assessee. The cross-objection filed by the assessee is accordingly dismissed as not pressed."*

*Respectfully following the aforesaid decision we direct the ld. AO to grant depreciation on the cost of license property incurred by the assessee."*

Respectfully following the same we uphold the ld. CIT(A)'s order and dismiss the appeal of the revenue.

3. In the result the appeal of the Revenue is dismissed.

**Order pronounced in the Court on 24.10.2018.**

**Sd/-**  
[S.S.Viswanethra Ravi]  
Judicial Member

**Sd/-**  
[ J.Sudhakar Reddy ]  
Accountant Member

Dated : 24.10.2018.  
[RG Sr.PS]

Copy of the order forwarded to:

- 1.Sri Laxmipat Surana, 12, Bonfield Lane, Kolkata-700001.
2. I.T.O., Ward-35(3), Kolkata.
3. C.I.T.(A)- 10, Kolkata    4. C.I.T-12, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O, ITAT Kolkata Benches