

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A", KOLKATA  
BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND  
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1648/KOL/2017  
(ASSESSMENT YEAR-2014-15)**

DCIT, Central Circle-2(1), 3 <sup>rd</sup> Floor, Aayakar Bhawan, Poorva, E.M.Bye Pass, 110, Shanti Pally, Kolkata-700107.	<b>vs</b>	M/s. Shalimar Pellet Feeds Ltd., 17 <sup>th</sup> Floor, Room No.17B & C, Everest House, 46C, Chowringhee Road, Kolkata-700001. <b>PAN-AADCS8617H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh.Robin Choudhary, Addl.CIT Sr.DR	
<b>Respondent by</b>	Sh. A.K.Tulsiyan, FCA	
<b>Date of Hearing</b>	22.10.2018	
<b>Date of Pronouncement</b>	22.11.2018	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

This appeal by the Revenue against the order dated 04.05.2017 passed by CIT(A)-20, Kolkata for AY 2014-15.

2. Ground nos. 1 & 2 is relating to the deletion of addition made on account of additional depreciation.
3. Heard both parties and perused the material available on record. It is noted from the record that this Tribunal in assessee's own case in ITA No.948 to 952/Kol/2017 decided the issue raised in Ground No.1 & 2 above in favour of the assessee for AY 2008-09 to 2011-12 & 2013-14 vide its order dated 17.10.2017. The relevant portion is reproduced herein below:-

*10.2. "The ld CIT sought to revise the assessment framed u/s 143(3) of the Act on 27.3.2015 treating the same as erroneous and prejudicial to the interest of the revenue in as much as the said order did not enquire the aspect of eligibility to claim additional depreciation on plant and machinery u/s 32(1) (iia) of the Act in the sum of Rs.1,64,48,649/-. A show cause notice to this effect was issued by the ld CIT to the assessee on 16.11.2016. The assessee filed a detailed written submissions together with the supporting evidences vide reply dated 3.2.2017 before the ld CIT both on legal and factual aspects. The assessee explained the entire manufacturing process by way of detailed written submission in each of the process (enclosed in pages 123 to 128 of Paper Book). It was specifically brought to the notice of the ld CIT that the tribunal vide its order dated 30.11.2016 had duly held that the assessee is engaged in the business of manufacture and thereby eligible for deduction u/s 80IB of the Act and copy of the order was also filed before the ld CIT. Once it is held that the assessee is engaged in manufacture, the eligibility to claim*

*additional depreciation u/s 32(1)(iia) of the Act on the plant and machinery used in manufacturing process is automatic. Accordingly it was pleaded that the order of the ld AO cannot be termed as erroneous warranting revision u/s 263 of the Act.*

*10.3. The ld CIT however ignored all the explanations and submissions made before him and observed that the ld AO having held in the assessment proceedings that the assessee is not engaged in manufacturing activity ought to have correspondingly withdrawn the claim of additional depreciation u/s 32(1)(iia) of the Act . Hence non withdrawal of the same constitutes an error in the order of the ld AO which also caused prejudice to the interest of the revenue. Accordingly he directed the ld AO to pass afresh assessment order in this regard. Aggrieved, the assessee is in appeal before us on the following grounds:-*

*1. That the Ld. PCIT erred in holding that the order of the AO is erroneous as well as prejudicial to the interest of the revenue on the issue of claim of additional depreciation on Plant & Machinery u/s 32(1)(iia). The Ld. AO has conducted proper enquiry in that respect during the course of assessment proceedings. As such, exercising of the jurisdiction u/s 263 of the I.T. Act is bad in law, and the order passed u/s 263 needs to be quashed. Hence, the addition needs to be deleted.*

*2. That the Ld. PCIT was wrong in disallowing additional depreciation of Rs.1,64,48,649/- claimed u/s 32(1)(iia) on Plant & Machinery, alleging that the assessee company was not involved in the process of manufacturing activity. He failed to consider the fact that it has been upheld by various courts including Hon'ble ITAT, Kolkata, in the assessee's own case that the production of poultry feeds amounts to manufacturing. Hence, the assessee was not wrong in claiming additional depreciation on Plant & Machinery u/s 32(1)(iia) of the Act. As such, the misinterpretation of facts by the Ld. PCIT and exercising the jurisdiction u/s 263 is factually wrong and need to be quashed.*

*3. That the petitioner craves leave to add, alter, amend or withdraw any ground/s of appeal before or at the time of hearing.*

*10.4. We have heard the rival submissions and perused the materials available on record including the paper books filed by the assessee. At the outset, we find that this tribunal in assessee's own case vide its order dated 30.11.2016 for the Asst Year 2013-14 in IT(SS)A No. 22/Kol/2016 had categorically held that the assessee is engaged in the manufacturing activity and thereby eligible for deduction u/s 80IB of the Act. Once it is held so, the allowance towards additional depreciation u/s 32(1)(iia) of the Act on plant and machinery is automatic and this was specifically brought to the notice of the ld CIT by the assessee which has been conveniently ignored by the ld CIT while passing the revision order u/s 263 of the Act. In these facts and circumstances, we find that the order of the ld CIT u/s 263 of the Act deserves to be quashed. Accordingly, the grounds raised by the assessee are allowed."*

3.1. In view of the same, we find no infirmity in the order of Ld.CIT(A).

4. Ground No.3 is relating to deletion of addition made on account of PF & ESIC.

4.1. Heard both parties and perused the material available on record. It is noted from the record that Ld.CIT(A) deleted the addition made by the AO on verification of Form No.3CD that the entire payment on account of employee's contribution towards PF & ESIC had been made by the assessee before the due date of filing of return of

income. Ld.CIT(A) also placed reliance on the decision of Hon'ble High Court in the case of *CIT vs Vijay Shree Ltd. reported in 43 taxmann.com 396*. For better understanding, relevant portion of CIT(A) is reproduced hereunder:-

13. *"I have considered the submission of the appellant and perused the assessment order. It is observed that in the assessment order the AO has made the disallowances on account of delayed payment of employee's contribution to PF & ESI. However, on verification of Form 3CD as well as the assessment order, it is observed that the entire payment on account of employee's contribution towards PF & ESI had been made by the appellant company before the due date of filing of return of income u/s 139(1) of the Act. Hence, in view of various judicial decisions as relied upon by the appellant including the decision of Hon'ble Calcutta High Court in the case of M/s Vijay Shree Ltd., 43 taxmann.com 396, the AO is directed to delete the disallowances of Rs.9,91786/- made by him. The ground no.4 is allowed."*

5. In view of the above, we find no infirmity in the order of Ld. CIT(A).

Accordingly, Ground No.3 raised by the Revenue is dismissed.

6. Ground No.4 is general in nature requires no adjudication, is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 22.11.2018.**

**Sd/-**  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Date:- 22.11.2018

\*Amit Kumar\*

Copy forwarded to:

**Sd/-**  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

1. Appellant- DCIT, Central Circle-2(1), 3<sup>rd</sup> Floor, Aayakar Bhawan, Poorva, E.M.Bye Pass, 110, Shanti Pally, Kolkata-700107.
2. Respondent- M/s. Shalimar Pellet Feeds Ltd., 17<sup>th</sup> Floor, Room No.17B & C, Everest House, 46C, Chowringhee Road, Kolkata-700001.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

Sr.P.S./H.O.O  
ITAT, KOLKATA