आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT.DIVA SINGH, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ **ITA No.82/Chd/2015**
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Mount Shivalik Brewereis Ltd., Mohan Grame, P.O. Bhankarpur, Mohali.	बनाम	The D.C.I.T., Circle 6(1), Mohali.
स्थायी लेखा सं./PAN NO: AAACM9806D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tej Mohan Singhj, Adv.
राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05.09.2018
उदघोषणा की तारीख/Date of Pronouncement: 30.11.2018

आदेश/Order

PER ANNAPURNA GUPTA, A.M. :

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Chandigarh (in short CIT(A) dated 31.12.2014 passed u/s 250(6) of the Income Tax Act, 1961 (in short referred to as 'Act').

2. At the outset, it was pointed out that this was the second round before the I.T.A.T. Drawing our attention to the order of the Ld.CIT(A) at para 2.1 it was pointed out that in the first round before the I.T.A.T. the issues relating to claim of depreciation on Effluent Treatment Plant (in short referred to as 'ETP') of Rs.20,84,484/- and foreign travelling expenses of Managing Director of Rs.14,21,898/- were restored to the file of the A.O. directing him to re-examine the issue and also directing the assessee to produce further evidence to substantiate its claim of

depreciation on ETP to re-examine the claim of foreign travelling in the light of the details filed before the CIT(A). It was thereafter stated that both the above additions were re-affirmed by the A.O. and the same were confirmed by the CIT(A).

3. Aggrieved by the same the assessee has now come up in appeal before us. Taking up ground of appeal No.1 relating to disallowance of depreciation on ETP and which read as under:

> *"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the addition of Rs.20,80,484/- made on account of disallowance of depreciation on Effluent Treatment Plant which is arbitrary and unjustified."*

4. The Ld. counsel for assessee first took us through the order of the I.T.A.T. in the first round dated 24.9.2012 restoring the issue back to the A.O. Drawing our attention to paras 8 to 14 of the order wherein the issue was dealt with the Ld. counsel for assessee pointed out that the facts relating to the issue were that the assessee had shown an addition of Rs.41,60,961/- on account of addition to ETP on which depreciation was allowable @ 100%. But the assessee had claimed depreciation @ 50% only, having used it for less than 180 days. Thus depreciation of Rs.20,80,484/- was claimed by the assessee on the ETP installed. It was thereafter pointed out that the A.O. had denied the said claim of the assessee by stating that the invoices of the purchases of the plant revealed that the purchases were made from November 2008 to March 2009 for the said ETP, which meant that the assessee was in the process of designing and installing the plant and, therefore, could not have put to use in the year. The matter was carried in appeal before the CIT(A) who upheld the addition. Thereafter drawing our attention to para 11 of the order the Ld. counsel for assessee pointed out that various

purchase bills of the plant were placed before the I.T.A.T. and also clearance certificate issued by Punjab Pollution Control Board dated 20.2.2009 to prove that the assessee had already put the ETP to use. It was pointed out that after going through the certificate, the I.T.A.T. held that the said certificate was only a No Objection Certificate for release of additional power and the assessee must have approached the electricity authorities for release of power only thereafter and after which the plant could not have been operated and sine no further evidence was filed by the assessee to substantiate its claim of having put the ETP to use in the year itself, the matter was restored back to the A.O. for re-examination. The Ld. counsel for assessee thereafter drew our attention to the assessment order framed thereafter and pointed out that the assessee during the course of proceedings before the A.O. had filed additional documents as proof of having installed the ETP during the year as under:

i) Brewer and Engineer Certificate
ii) PSEB demand notice for increase in load
iii) PPCB clearance certificate dated 20.2.2009
iv) PPCB consent dated 26.2.2009

5. It was thereafter pointed out that the A.O. had rejected all the above evidences as not being sufficient to prove the assessee's claim holding that brewer certificate was issued by Chief Engineer and Brewer of the assessee company and, therefore, could not be relied upon and rest of the evidences only showed that the assessee's request for additional load had been proved and none of the documents gave a clear cut idea about the actual date when the plant was put to use. It was thereafter pointed out that the A.O. conducted his own enquiries by

seeking information u/s 133(6) of the Act from the Additional Superintendent Engineer, Operation Division (PSPCL), Lalru, Punjab regarding the date on which the additional power load of 350.064 KW was actually sanctioned by PSEB (now PSPCL) to the assessee. It was pointed out from the order that the same was stated to have been granted to the assessee only on 20.5.2009. The said information was confronted to the assessee who stated in reply that new ETP had run on the existing power load available with the company. The A.O. dismissed this contention of the assessee stating that the assessee had never before raised this contention before any of the authorities i.e. the A.O., CIT(A) or even I.T.A.T. in the first round. He, therefore, held that since the load to run the plant was granted only in the next financial year, the assessee could not have possibility put to use the ETP in the impugned year. The depreciation claimed by the assessee of Rs.20,80,484/- was accordingly disallowed by the A.O. It was thereafter pointed out that the CIT(A) also upheld the disallowance for the same reason. Our attention was drawn to the findings of the Ld.CIT(A) at para 3.3 of his order as under:

> *"3.3 I have considered the facts of the issue. The appellant had produced certain documents before the Assessing Officer, which have rightly been rejected by the Assessing Officer, since these were not relevant to decide as to when the Effluent Treatment Plant was put to use. The certificate issued by the Brewer and Engineer of appellant company has rightly been rejected by the Assessing Officer, since it has been signed by the appellant's own employee. The office of Additional Superintendent Engineer has confirmed that the additional power load was granted to the appellant only on 20.05.2009 and the Effluent Treatment Plant could not have been put into operation without the additional power load. The contention of the appellant is that the said plant was run on the existing power load, but it is not possible to run such a heavy plant without additional power load and the electricity department would not permit the same. Moreover, this argument was never taken in the original assessment proceedings or in the appellate proceedings. Therefore, it is held that the Assessing Officer has rightly disallowed the depreciation and her*

action in this regard is accordingly upheld. Ground of appeal No. 1 is dismissed."

6. Thereafter the Ld. counsel for assessee made detailed submissions before us describing the nature of the business of the assessee of being manufacturing and sales of beer and that it its first ETP was installed in financial year 1972-73 when the first brewery was set up and thereafter its upgradation was done around 3-4 times. It was contended that the assessee has only one ETP and the addition made during the year was only by way of enhancing the capacity of ETP from 100 KLD to 156 KLD. It was pointed out that ETP was purchased from M/s Lars Enviro Pvt. Ltd. and put to use on 27.1.2009 as per the Chief Brewer certificate. The different components of the ETP were pointed out to us and that out of various components 3 were prefabricated while the balance was civil work done at the site of the assessee. The assessee thereafter contended that the average power load needed to run ETP plant was 70 KW and after installation of ETP on 27.1.2009 and its commissioning immediately after receiving the consent letter from PPCB on 20.2.2009, the ETP was put to use on the existing power load itself since this was off season of beer industry and extra load wasnot required on account of the low capacity production of beer during this period. It was pointed out that the increase in power load was thereafter made available on 27.5.2009. The written submissions to this effect were filed before us dated 5.9.2018 as under:

Respectfully submit as under: -

1. *Molson Coors India Pvt. Ltd., formerly known as Mount Shivalik Breweries Ltd., was incorporated on 31st October,1972, and started business of Manufacturing/Sales of Beer at Bhankarpur, Derabassi.*

2. *That the first Effluent Treatment plant (hereinafter mentioned as ETP),was installed in Financial Year 1972-73, when the*

first brewery was set up in Bhankarpur and thereafter its upgradation was done around 3-4 times, as per the need of the plant.

3. *That during the year under consideration, ETP was installed on 27.01.2009 and was commissioned immediately after receiving consent letter dated 20.02.2009 from Punjab Pollution Control Board. Since this period being Off Season for beer Industry, the existing power load was sufficient for the commissioning of new ETP plant. The increase in power load from 1164.844KW by 350.064 KW was made available on dated 27.05.2009, after receipt of sanction from PSEB.*

4. *That the unit has only one ETP, of which capacity was enhanced from 100 KLD to 156 KLD. (Kilo liters per Day.)*

5. *That this ETP was purchased from M/s Lars Enviro Pvt. Ltd. & had been installed & commissioned at Mount Shivalik Breweries Ltd, Bhankarpur and put to use on 27th January,2009. No trial run was required for this type of plant. That the average time required to install this plant around 5-6 months*

6. ***Effluent Treatment Plant*** *or* ***ETP*** *is one type of waste water treatment method which is particularly designed to purify industrial waste water. Its aim is to release safe water to environment from the harmful effect caused by the effluent*

   The quantity & quality of waste water generation fluctuates depending on operation like raw material handling, wort preparation, fermentation, water consumption, solid liquid separation, packaging etc.

   The effluent discharged is highly organic & acidic in nature with high COD, BOD, consisting of easily biodegradable sugars, soluble starch, ethanol, volatile, fatty acid, suspended solids, yeast etc. which may pollute the water bodies considerably if drained as such. In order to meet requirements of CPCB/PPCB, ETP plant is installed which consists of following: Collection Tank

   1. *UASB Reactor*
   2. *Primary clarifier*
   3. *Aerobic Treatment Tank*
   4. *Secondary Clarifier*
   5. *Sand Filter*
   6. *Activated Carbon Filter*
   7. *Studge Drying Beds*

   That out of the above components of the plant Sand Filter and Activated Carbon is prefabricated and balance is civil work which is done at the site.

Average power load needed to run the ETP plant is 70KW. That total area covered by this plant is around 3458 Square meters. The

Dimensions of the components of ETP are as under: -

Name of Unit	***Dimensions***
Collection Sump	*2x2.8x2.5*
Buffer tank	*Dia: 8mm, SWD:2.7*
UASB Reactor	*Dia:9.5m, SWD-6*
Aeration Lagoon (Equalization Tank)	*13.5xl3.5x2.75*
Clarifier	*Dia: 8m, SWD:2.75m*
Dia:6x8m	
MCC room/Lab	*4x6*
SDB	*-10X7.6nos*
Flare Stack	*Dia:0.06m*

That the photographs are enclosed for your ready reference".

7. The Ld. counsel for assessee, therefore, contended that the ETP being capable of running of the existing power load the denial of claim of depreciation merely because the additional load was sanctioned in the succeeding year was wrong. The Ld. counsel for assessee further stated that in any case denial of depreciation was tax neutral action since the asset was eligible for depreciation @ 100% which having been denied in the impugned year to the extent of 50% as claimed by the assessee, was to be allowed completely @ 100% in the succeeding year and that the assessee had returned sufficient profits in both the years. Therefore, the additional taxes collected in the impugned year would be required to be refunded in the succeeding year on account of the said action of the A.O.

8. The Ld. DR, on the other hand, relied upon the order of the lower authorities.

9. We have heard the rival contentions, perused the orders of the authorities below. The issue to be determined and adjudicated is whether the assessee was able to establish that

its ETP was installed and put to use during the year, enabling it to claim depreciation on the same. The facts which are not disputed are that all the purchase bills relating to various components necessary for construction of ETP relate to the period up to March, 2009 of the impugned year and none of the bills pertain to the succeeding year. Also the assessee had obtained no objection certificate from the Punjab Pollution Control Board for release of additional power load of 350.064 KW to the assessee and had also obtained sanction from the said Board for discharge of effluent out of the premises of the assessee breweries by end of February, 2009 in the form of clearance certificate issued by the Board dated 20.2.2009 and consent letter given by the Board for discharge of effluent dated 26.2.2009. Further the Chief Engineer and Chief Brewer of the assessee company had certified ETP having been installed and commissioned and thus put to use on 27.02.2009. Thus the above facts undeniably prove that the plant was installed before the close of the year and only reason for restoring the issue back to the A.O. in the first round by the I.T.A.T. was that the assessee was required to substantiate that the asset was put to use also during the year since no evidence in this regard was filed by the assessee having furnished only the clearance certificate from PPCB for release of additional power load but no evidence of having taken the same had been filed. Thus what the assessee was required to prove was that ETP had been put to use during the year, its installation for all purposes not being in dispute. The assessee in this regard, we find, has stated that being installed, the ETP was ready for use also since it was capable of being used with the available power capacity with the

assessee since it was the lean period of working of the assessee brewery and less load was required for running the ETP. The Revenue, on the other hand, has disputed this claime of the assessee stating that it had not taken this ground earlier before the authorities in the first round and further for the reason that additional load was provided only in the subsequent year. On this basis the Revenue has rested its case that the assessee's contention of putting ETP to use in the current year cannot be believed and since additional load was sanctioned in the succeeding year only it was to be treated as having been put to use in the succeeding year only. We do not find any reason to disbelieve the contention of the assessee that ETP was put to use on the existing load available with the assessee. The contention of the assessee that existing load was sufficient for commissioning of the new ETP plant since this period was the off season for the beer industry, we find that the Revenue has not controverted the same. The Revenue has not disputed the fact that this was the lean period for the beer industry. Therefore, it logically follows that the power load required to run the assessee's brewery being far less than the normal and the assessee could have managed to run the same with the existing power load. The contention of the Revenue, therefore, that it was not possible to run such a heavy plant without additional power load is, therefore, without any merits and is dismissed by us. Moreover, we do not find any merit in the contention of the Revenue that this plea of the assessee is unacceptable for the reason that it was not raised by the assessee before the authorities earlier in the first round. The merits of the contention are to be judged on the basis of the facts on which it

is based and have nothing to do with the point of time with which they are raised. The fact that this was the lean period of the beer industry and, therefore, the brewery was capable of being run on far less than normal electricity load having not been disputed, there was merit in the claim of the assessee that the addition made to the capacity of the existing ETP plant in the impugned year was capable of running on the available power load and without pointing any falsity in the contention raised by the assessee the same cannot be rejected merely for the reason that it was not raised earlier by the assessee. Moreover we also find merit in the contention of the assessee that the entire exercise of disallowance of depreciation is a tax neutral exercise since the depreciation disallowed in the impugned year is eligible for allowance in the succeeding year since the assessee as per the revenue authorities had put to use the ETP in the succeeding year and rate of depreciation on the same @ 100% is not disputed. Further the assessee has contended that it had returned sufficient profits in both the years and, therefore, the tax demand raised in the impugned year by denial of deduction on depreciation claimed by the assessee on ETP plant would be required to be refunded in the succeeding year by granting depreciation in the said year. In view of the above facts and circumstances of the case we hold that the installation of the ETP in the impugned year not being in dispute and the assessee having proved that ETP was capable of being run on the existing load available with the assessee in the impugned period being a lean period in the beer industry the factum of ETP being put to use in the impugned year stands established. The assessee is, therefore, we hold, is eligible to claim depreciation @ 50% of the

value of the asset. The order passed by the CIT(A) denying the said claim is, therefore, set aside and ground No.1 raised by the assessee is, therefore, allowed.

10. Ground No.2 raised by the assessee reads as under:

> *"2. That the Ld. Commissioner of Income Tax (Appeals) has further erred in law as well as on facts in upholding the addition of Rs.12,04,703/- made on account of disallowance of foreign travel expenses which is arbitrary and unjustified."*

The above ground relates to the disallowance of foreign traveling expenses made by the A.O. and upheld by the CIT(A) to the extent of Rs.12,04,703/-.

11. Brief facts relating to the issue are that the assessee had claimed an amount of Rs.14,21,898/- on account of foreign travelling of the Managing Director (MD) of the assessee company. The assessee had submitted in the original assessment proceedings that the visits were for business purposes, but had not filed any documentary evidences to prove that the said expenses were incurred wholly and exclusively for business purposes and so the entire amount was disallowed. The assessee had filed certain evidences in appellate proceedings before Commissioner of Income Tax (Appeals), but reason for not submitting the same before the Assessing Officer had not been given and so these were not accepted and the addition was confirmed. The ITAT directed the Assessing Officer to re-examine the issue by considering the details filed before Commissioner of Income Tax (Appeals). The assessee accordingly produced certain documents before the A.O. in the second round, which were rejected as not sufficient for establishing the factum of having incurred expenditure wholly and exclusively for the purpose of business of the assessee stating that they only gave the details

of the expenses incurred and only proved the factum of expenditure having been incurred without establishing that they were incurred for the purpose business of the assessee. The A.O., however, allowed the expenditure to the extent of Rs.2,17,195/- incurred by the Managing Director (in short 'MD') on his trip to Germany on finding that expenses of the employees of the assessee company on the trip undertaken to Germany had been allowed by the A.O. and on holding that the said amount was sufficient for incurring on MD of the company while the remaining was disallowed holding the same to be extravagant and holding that the some personal element could have also been involved in the same. The Ld.CIT(A) upheld the order of the A.O.

12. Before us, the Ld. counsel for assessee reiterated the contentions made before the lower authorities stating that the MD of the company had undertaken two trips one to U.K. and the other to Germany. It was contended that in U.K. the MD had visited the breweries in Edinburgh, UK, namely Heineken, which had acquired the UK business of "Scottish & New Castle" and "Scottish Courage Brewing Ltd." in April, 2008 and to explore new technical and business opportunities in the beer business. It was contended that the MD had stayed at Hotel Balmoral, Edinburgh. Copy of brief profile of the Heineken UK was also filed. As far as the trip undertaken to Germany, it was contended that the main purpose was to attend the annual European trade fair for the beverage industry named 'The Brau Bevile 2008' in Nuremberg, Germany which was one of the most important European trade fairs for production and marketing of beer and soft drinks. It was further contended that the expenditure incurred on the trip of the employees of the assessee company to

Germany, Nuremberg had been allowed by the A.O. and, therefore, there was no reason to disallow a portion of the expenditure incurred on the MD also on the same trip.

13. The Ld. DR, on the other hand, relied upon the orders of the authorities below stating that the assessee had only raised general contentions and had failed to prove with evidence the business purpose of the trips undertaken and further that the trip undertaken to Germany Nuremberg had been rightly disallowed to the extent of Rs.3,27,030/- since the personal element could not be ruled out in the same and also that the expenditure incurred were excessive since while a sum of Rs.2,17,195/- was spent on the trip of one employee the amounts spent on the trip of MD was Rs.5,44,225/- which was unreasonable and excessive and this rightly denied by the revenue authorities.

14. We have heard the rival contentions. Vis-à-vis the claim of the assessee of foreign travelling expenses incurred on the trips undertaken to UK we agree with the revenue authorities that the assessee has failed to prove that the trip was undertaken for the purpose of business of the assessee. The only evidence, we find, which have been filed by the assessee gives the details of the trip and proof of expenses incurred by way of bills of travel agent and bills of foreign exchange purchased. No evidence to prove the visit of the MD to breweries in Edinburgh had been filed, nor any other evidence to prove that the trips were undertaken for business purpose. Therefore, we uphold the order of the Ld.CIT(A) in disallowing the claim of foreign travelling expenses incurred on the trip undertaken by the MD of the assessee company to UK. As far as the trip undertaken by the MD of the

assessee company to Germany, we find merit in the contention of the assessee. Admittedly, the business purpose of the trip to Germany stands established and accepted by the A.O. while allowing expenses incurred on other employees of the assessee company who had accompanied the MD on the said trip. Having accepted the same, he has allowed the expenses incurred on the MD but has restricted it to the extent of Rs.2,17,195/- disallowing expenditure to the extent of Rs.3,27,030/- for the reason that he found the same to be excessive as compared to other employees and personal use could not be ruled out for the same. We cannot agree with this contention of the Revenue. There is no justification for holding the expenses incurred on the MD as excessive. Surely the stature of an MD if far above that of the other employees of the company and therefore the expenses cannot be said to be excessive by comparing with the quantum incurred on other employees.Even while disallowing expenses for personal usage, only general statements have been made that some personal element must be involved in the trip to Germany. There is therefore we find no basis either for holding the expenses incurred on the MD's trip to Germany excessive or personal. The Revenue cannot deny the claim of expenditure on whims and fancies. The same is, therefore, not acceptable. In view of the same, we hold that the denial of claim of expenditure incurred on the trip of the MD of the assessee company to Germany was unwarranted and uncalled for and the same is directed to b allowed to the assessee. The disallowance of claim of expenditure, therefore, to the extent of Rs.3,27,030/- is deleted.

In effect the claim of expenditure incurred on the trip of MD to UK is denied while that on the trip to Germany is allowed in totality. The ground of appeal No.2 raised by the assessee is, therefore, partly allowed.

15. In effect, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court.

Sd/- Sd/-

दिवा सिंह **अन्नपूर्णा गुप्ता**
(DIVA SINGH) **(ANNAPURNA GUPTA)**
न्यायकि सदस्य/ Judicial Member **लेखा सदस्य/ Accountant Member**
दिनांक /Dated: 30th November, 2018
रती
आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar