

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA Nos.616 to 618/PUN/2016**  
**निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12**

Kolhapur Zilla Sah Dudh Utpadak Sangh Ltd.,  
B-1, MIDC, Gokul Shiraon,  
Kolhapur .... अपीलार्थी/Appellant

PAN: AAAAK0230D

Vs.

The Asst. Commissioner of Income Tax,  
Circle 1, Kolhapur .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से / Respondent by : Shri Sudhendu Das

सुनवाई की तारीख / <b>Date of Hearing : 03.12.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 18.12.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

This bunch of appeals filed by assessee are against consolidated order of CIT(A)-1, Kolhapur, dated 28.01.2016 relating to assessment years 2009-10 to 2011-12 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to the same assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The appeals of assessee were fixed on various dates and even the acknowledgement of service of notice is available on record. The assessee on one of the dates of hearing i.e. 23.05.2018 moved an application for adjournment. However, on all the other dates of hearing i.e. starting from 09.01.2018, 15.03.2018, 25.07.2018, none appeared on behalf of assessee, though notices were issued to the assessee. As pointed out earlier, even acknowledgements of service of notice are available on record. The appeal was last fixed for hearing on 03.12.2018. However, none appeared on behalf of assessee nor any application was filed for adjournment. Hence, we proceed to dispose of the present appeals after hearing the learned Departmental Representative for the Revenue.

4. The facts and issues in all the appeals is same and the issue raised is against claim of additional depreciation on machinery purchased on or after 01.04.2005. However, in order to adjudicate the issue, reference is being made to the facts and issue in ITA No.616/PUN/2016, relating to assessment year 2009-10.

5. The assessee in ITA No.616/PUN/2016, relating to assessment year 2009-10 has raised the following ground of appeal:-

- 1) *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on merits in confirming additions of Rs.35,78,048/- made by the A.O. on account of additional depreciation claimed on machinery purchased on/or after 01.04.2005.*

6. Briefly, in the facts of the case, the assessee was engaged in processing of milk and milk products. The assessee was Co-operative society and it collects milk from primary milk societies spread over Kolhapur and adjoining districts. The case of assessee was picked up for scrutiny. For the year under consideration, the assessee had claimed depreciation @ 35% on machinery, of which WDV was about ₹ 1.77 crores, which included additional depreciation of ₹ 35,78,048/- @ 20%. The assessee was asked to explain as to why the said additional depreciation should not be disallowed in its hands. The assessee explained that it had acquired new machinery after 31.03.2005 and hence, was entitled to claim the depreciation. The assessee claimed that the additional depreciation was available to the assessee in succeeding year till the WDV of machinery becomes nil and section does not say that it was only in the year in which the new machinery was installed. The assessee had purchased new machinery in assessment years 2005-06, 2006-07, 2007-08 and 2008-09 and the same were installed in the same year/s only. However, the Assessing Officer noted that new machinery was purchased in assessment year 2009-10 was of only ₹ 2,19,740/- and he observed that the contention of assessee was misconceived and legally untenable. The Assessing Officer denied the claim of deduction, against which the assessee filed an appeal before the CIT(A), who upheld the order of Assessing Officer and denied the claim of additional depreciation. The CIT(A) was of the view that as per second proviso to section 32(1)(ii) of the Act, since the machinery purchased was used for less than 180 days, the assessee would have to restrict his claim of normal as well as additional depreciation to 50% of eligible amount. He further held that balance 50% of additional depreciation would lapse.

7. The assessee is in appeal against the order of CIT(A) in this regard.

8. We find that similar issue of claim of additional depreciation in the year consequent to the year of purchase and being put to use, arose before the Tribunal in the case of DCIT Vs. Shri Madhavan Nanu Pillai in ITA No.2222/PN/2013, relating to assessment year 2009-10 and the Tribunal vide order dated 23.09.2015 had held as under:-

*“9. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in relation to the claim of additional depreciation under section 32(1)(ia) of the Act. Under the provisions of said section, the assessee is entitled to claim of additional depreciation equal to 20% of actual cost of such machinery or plant, in case of acquisition or installation of any new machinery or plant, other than ships and aircrafts, after 31<sup>st</sup> day of March, 2005, by the assessee engaged in the business of manufacture or production of any article or thing or in the business of generation and distribution of power. It is further provided under the said clause that no deduction shall be allowed in respect of any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person or any machinery or plant installed in any office premises or any residential accommodation. Further, no such deduction of additional depreciation is allowable against any office appliances or road transport vehicles or any plant & machinery, the whole cost of which was allowed as deduction, in computing income chargeable under the head Profits & Gains of the business of any previous year. The requirement of the section is that new plant or machinery, which has not been used by any other person, and which has not been installed in any office or residential premises, is to be acquired or installed after 31<sup>st</sup> day of March, 2005, by the assessee, which is engaged in the business of manufacture or production of article or thing. The assessee before us is engaged in the manufacture of C.I. castings and had acquired the machinery during the period 01.04.2005 to 31.03.2008. The assessee in the return of income had claimed depreciation @ 20% on the WDV of plant & machinery of Rs.1,22,74,673/-. The said depreciation was allowed to the assessee while completing assessment under section 143(3) of the Act vide order dated 30.12.2011. Thereafter, audit objection was raised against the assessee in respect of claim of depreciation resulting in short levy of tax. Accordingly, the Assessing Officer issued notice under section 154 of the Act. The Assessing Officer pointed out that the additional depreciation has been wrongly claimed by the assessee. In reply, the assessee submitted that since it had purchased machinery after 31.03.2005 and the same was not office appliance, hence, it was entitled to the claim of additional depreciation @ 20%. The plea of the assessee before the Assessing Officer was that the said additional depreciation was available for the assessment year in which the new machinery was installed and was also available to the assessee in succeeding years till the WDV value of machinery became Nil. The Assessing Officer however, rejected the claim of the assessee and held the assessee to have claimed excess depreciation and consequently, the income was revised in the hands of the assessee after making an addition on account of excess depreciation of Rs.24,54,934/-. The CIT(A) allowed the claim of assessee by observing that whether the additional depreciation was available only in the first year of acquiring the plant & machinery or not, was a debatable issue and the same could not be dealt with under section 154 of the Act.*

*10. In the facts of the present case, the assessee had claimed additional depreciation on account of plant & machinery purchased by the assessee in the*

*preceding year. Since the said machinery was purchased for less than 180 days in assessment year 2008-09, the additional depreciation was claimed @ 20%. However, in the year under appeal i.e. assessment year 2009-10, the assessee further claimed additional depreciation @ 20% on the WDV of plant & machinery. Though the assessee raised several objections to the initiation of proceedings under section 154 of the Act and also its claim of deduction @ 20% on the WDV of assets, before conclusion of hearing, the learned Authorized Representative for the assessee fairly admitted that where the plant & machinery was acquired in the accounting period for less than 180 days, only 10% of the cost of plant & machinery was available to the assessee as additional depreciation in the first year and balance claim of additional depreciation to the extent of 10% was to be allowed in the next succeeding year. The learned Authorized Representative for the assessee also submitted that the claim made by the assessee at Rs.24,54,934/- @ 20% on cost of machinery was to be restricted to 10% on cost of machinery, which is to be allowed as additional depreciation under section 32(1)(iia) of the Act. In view of the provisions of law, wherein additional depreciation is allowable to the assessee to the extent of 20% on the cost of plant & machinery and where the assessee has purchased an asset in the preceding year and has been allowed only 10% of the cost of asset as additional depreciation, the correct position of law is that balance 10% of additional depreciation is to be allowed to the assessee. Where the Assessing Officer failed to apply the correct provisions of law, the assessment order passed by the Assessing Officer is amenable to rectification under section 154 of the Act. In view thereof, we uphold the invoking of provisions of section 154 of the Act against the assessee. Further, in view of the concession made by the learned Authorized Representative for the assessee, where the assessee was only entitled to 10% of the cost of machinery to be allowed as additional depreciation in the instant assessment year, since the balance 10% of cost of machinery has been allowed as additional depreciation in the preceding year, we reverse the order of CIT(A) and direct the Assessing Officer to allow depreciation @ 10% of the cost of machinery at Rs.1,22,74,673/- as additional depreciation on plant & machinery purchased by the assessee in the preceding year. Reversing the order of CIT(A), we allow the grounds of appeal raised by the Revenue.”*

9. Though the issue before the Tribunal in the aforesaid case started from initial issue of being debatable issue and whether the same could be dealt with under section 154 of the Act, however, the Tribunal also decided the issue on merits and it has been held that in case the plant & machinery is held in the year of acquisition for a period less than 180 days, then balance 10% of cost of asset to be allowed as additional depreciation, is to be allowed in the succeeding year. Following the same parity of reasoning, we hold that the assessee is entitled to claim the aforesaid benefit. However, from the perusal of record, the relevant details of purchase of asset from year to year are not available. Accordingly, we direct the Assessing Officer to verify the claim of

assessee in this regard. So, in case the asset was purchased in assessment year 2008-09 and was used for less than 180 days, then balance additional depreciation of 10% is to be allowed in assessment year 2009-10 and similar position is to be followed in assessment years 2010-11 and 2011-12. The Assessing Officer shall verify this position and allow the claim of additional depreciation as directed by us in the paras hereinabove. The ground of appeal raised by assessee is thus, allowed for statistical purposes.

10. In the result, all the appeals of assessee are allowed for statistical purposes.

Order pronounced on this 18<sup>th</sup> day of December, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 18<sup>th</sup> December, 2018.  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune