

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.5709/Del/2014
Assessment Year: 2007-08

Dy. Commissioner of Income-tax,
Circle 14(1), New Delhi.

Quippo Oil & Gas Infra Ltd.
D-2, 5th Floor, Southern Park,
Saket Place, Delhi.
PAN: AAACQ1278P

C.O. No.201/Del/2017
ITA No.5709/Del/2014
Asstt. Year: 2007-08

Quippo Oil & Gas Infra Ltd.
D-2, 5th Floor, Southern Park,
Saket Place, Delhi.
PAN: AAACQ1278P
Appellant

vs

Dy. Commissioner of
Income-tax,
Circle 14(1), New Delhi.
Respondent

Assessee by Ms Alka, Advocate
Revenue by Shri Surender Pal, Sr. DR

Date of Hearing 06.12.2018
Date of Pronouncement 18.12.2018

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 14/07/2014 in Appeal No. 389/11-12,
passed by the learned Commissioner of Income Tax (Appeals)-XVII, Delhi ("Ld.

CIT(A)”), the revenue filed ITA 5709/del/2014 and the assessee filed cross objection No. 201/del/2017.

2. Brief facts of the case relevant for the disposal of this appeal are that the assessee is engaged in the business of providing plant and machinery on hire. For the Assessment Year 2007-08 they have filed their return of income on 15/11/2007 declaring nil income and loss of Rs.13,41,98,535/- and has claimed depreciation at 60% on equipment under the head “plant and machinery”, which comes to Rs.13,31,85,754/-. The assessment was completed under section 143(3) of the Income-tax Act, 1961 (“the Act”) by order dated 21/12/2009.

3. However, during the course of assessment proceedings for the AY 2008-09, Ld. Assessing Officer observed that the assessee claimed depreciation at 60% on the plant and machinery that was leased out, though the assessee is not a mineral oil concern and not eligible for higher rate of depreciation, and therefore the excessive claim of depreciation was disallowed and assessment was completed accordingly. Inasmuch as the assessee claimed depreciation at excessive rates on such plant and machinery for the assessment year 2007-08 also and the assessee is not entitled for the same, Ld. AO initiated the proceedings under section 147 of the Act. Assessee placed reliance on the decision of the Hon’ble jurisdictional High Court in the case of CIT vs. HLS India Ltd (2011) 11 taxman.com 83 (Del) stating that higher rate of depreciation are to be allowed.

4. Ld. AO, however, observed that though he was duty-bound to follow the mandate of the decision of the Hon’ble jurisdictional High Court in the case of HLS India (supra), but since it was ascertained that the Department has not accepted the said decision and filed SLP to the Hon’ble Supreme Court,

respectfully not following the ratio of the said decision, the higher rate of depreciation on the hired out oil rigs is not allowable. On this premise the AO added a sum of Rs.9,98,89,316/-to the income of the assessee.

5. In appeal, Ld. CIT(A) upheld the validity of the proceedings under section 147 of the Act, but in respect of the merits, observed that the plant and machinery of the assessee i.e. oil rigs owned by them and are leased out to various mineral oil concerns like Reliance Industries Limited, Orles Ltd and ONGC Ltd and claimed 60% depreciation on such rigs. Ld. CIT(A) observed that the AO did not discuss the issue of the specific plant and machinery but ultimately held that the assessee is not a mineral oil concern and did not fulfill one of the basic conditions to entitle themselves to claim the depreciation at 60%. Ld. CIT(A), as a matter of fact, found that the assets of the oil rigs are wholly owned by the assessee and are used for the purpose of business of the assessee which is to give on lease these assets. Following the decision of the Hon'ble jurisdictional High Court in the case of HLS India (supra), learned Ld. CIT(A) granted relief to the assessee and deleted the addition of Rs.9,98,89,316/-.

6. The revenue is, therefore, in this appeal challenging the deletion of the excess depreciation claimed by the assessee whereas the assessee being aggrieved by the upholding of the validity of section 147 proceedings preferred across objection.

7. At the outset, it is brought to our notice that the SLP preferred against the order of the Hon'ble judicial High Court in the case of HLS India Ltd (supra), was dismissed by the Hon'ble apex court in SLP (civil) No. 2723/2012 by order dated 16/02/2012. A copy of the order is produced and we have perused the same. It could be seen from the assessment order, it is not the case of the

revenue that the ratio laid down by the Hon'ble jurisdictional High Court in the case of the HLS India Ltd (supra) has no application to the facts of the case but the only ground on which the AO did not follow the same is that the Department has preferred an SLP against such order to the Hon'ble Supreme Court. Now the things are clear and SLP preferred against the orders of the jurisdictional High Court was dismissed.

8. In the circumstances, there is no legal impediment to follow the deletion of the Hon'ble judicial High Court in the case of the HLS India Ltd (supra) which has application to the facts of the case. We, therefore, respectfully following the ratio of the decision are of the considered opinion that there is no illegality or irregularity in the finding of the Ld. CIT(A). We consequently uphold the said finding and dismiss the ground of appeal of the revenue. In the circumstances, inasmuch as we have granted relief to the assessee on merits, we do not find it just and necessary to delve deeper into the aspect of the grounds raised in the cross objection since they have become academic. We accordingly dismiss the cross objections raised by the assessee.

9. In the result both the appeal of the revenue and the cross objection preferred by the assessee are dismissed.

Order pronounced in the Open Court on 18th December, 2018.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 18th December, 2018

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

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