

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No.4876/Del/2014
Assessment Year : 2011-12

Deputy Commissioner of
Income Tax,
Central Circle-4,
New Delhi.
(Appellant)

Vs. M/s Avichal Buildcon (P) Ltd.,
1711, S.P. Mukherjee Marg,
Delhi – 110 006.
PAN : AAFCA6846A.
(Respondent)

ITA No.824/Del/2015
Assessment Year : 2011-12

M/s Avichal Buildcon
Pvt. Ltd.,
1711, S.P. Mukherjee Marg,
Delhi – 110 006.
PAN : AAFCA6846A.
(Appellant)

Vs. Deputy Commissioner of
Income Tax,
Central Circle-4,
New Delhi.
(Respondent)

Revenue by : Smt. Sunita Singh, CIT-DR.
Assessee by : Shri R.S. Singhvi, CA.

Date of hearing : 24.01.2019
Date of pronouncement : 28.01.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

These cross-appeals are filed against the order of learned CIT(A)-
XXXIII, New Delhi dated 25th April, 2014.

2. Since the issues in these cross-appeals are interrelated, we
consider them together.

3. The facts of the case are that for the year under consideration, the assessee filed the return declaring loss of ₹2,48,48,142/-. Since as per the return of income the assessee had declared the loss, no deduction u/s 80-IC was claimed. During the course of assessment proceedings, the Assessing Officer noticed that the assessee company has demerged from M/s Dharampal Satyapal Ltd. with effect from 01.04.2006 by the order of Hon'ble Delhi High Court dated 11th September, 2007. By such demerger, the assessee as well as Abhisar Buildwell Pvt.Ltd. came into effect. The Assessing Officer noticed that M/s Dharampal Satyapal Ltd. have purchased the plant and machinery out of deferred government grants. Cost of such plant and machinery was ₹55.72 crores. The Assessing Officer was of the opinion that by virtue of Explanation-7 to Section 43(1), the cost of asset should be reduced by the deferred government grants. He found that since the entire assets were purchased out of government grants, the assessee was not entitled to any depreciation. Accordingly, he disallowed the depreciation claimed by the assessee at ₹3,96,19,664/-, which resulted in the assessment of total income at ₹1,47,71,522/-. On appeal, the assessee challenged the disallowance of depreciation. Learned CIT(A) upheld the order of the Assessing Officer on this issue and therefore, the assessee is in appeal vide ITA No.824/Del/2015. Before the learned CIT(A), the assessee claimed deduction u/s 80IC and also filed the audit report in Form 10CCB. Learned CIT(A) directed the Assessing Officer to allow deduction u/s 80IC as per law. The Revenue is in appeal against this direction of the learned CIT(A).

4. We have considered the rival submissions and have perused the material placed before us. So far as the assessee's appeal is concerned, it is stated by the learned counsel that this issue is squarely covered in favour of the assessee by the decision of the ITAT in the case of Abhisar Buildwell Pvt.Ltd. vide ITA No.823/Del/2015. He

stated that Abhisar Buildwell Pvt.Ltd. was also demerged from M/s Dharampal Satyapal Ltd. by the same order of Hon'ble High Court. The Assessing Officer has disallowed the depreciation in the case of Abhisar Buildwell Pvt.Ltd. also which was directed to be allowed by the ITAT following the decision of Hon'ble Apex Court in the case of CIT Vs. Meghalaya Steels Ltd. – [2016] 383 ITR 217 (SC). He, therefore, stated that the claim of depreciation may be allowed.

5. Learned DR, on the other hand, relied upon the order of the Assessing Officer. She further stated that the demerger took place in the year 2006-07 while the year under consideration is 2011-12. How the depreciation can be claimed and allowed on actual cost of demerged assets. It should have been claimed on WDV. Learned counsel was not readily able to state what happened in the preceding four years so far as the allowability of depreciation is concerned.

6. After considering the facts of the case and submissions of both the sides, we deem it appropriate to set aside the orders of the authorities below on this point and restore the matter to the file of the Assessing Officer. Admittedly, demerger took place in the year 2006 and thereafter whether the depreciation is to be allowed on the actual cost of demerged assets or the cost is to be reduced by any government grant received by the demerged company should have been examined in the assessment year 2007-08 and thereafter, year after year, depreciation is to be allowed on WDV. These facts are not available on record. We, therefore, direct the Assessing Officer to examine what happened in the preceding years. If in the preceding years the depreciation was not claimed or this issue was not considered and the facts of the case warrant the consideration of this issue in the year under consideration, then Assessing Officer will consider the same in the light of the decision of Hon'ble Apex Court in

the case of Meghalaya Steels Ltd. (supra) and also the decision of ITAT in the case of Abhisar Buildwell Pvt.Ltd. vide ITA No.823/Del/2015. If the claim of depreciation of the assessee is allowed, then the assessed income will turn into negative income and there will be no question of claim u/s 80IC which will render the Revenue's appeal academic. If at all the Assessing Officer takes the decision to disallow the depreciation, then he will consider the claim of deduction u/s 80IC as per the direction of the learned CIT(A) in paragraph 5.5 of his order, which reads as under:-

"5.5 Considering the entire facts and circumstances of the case, I admit the audit report in form 10CCB as fresh evidence and the same has been examined by the assessing officer on merits as well. No further opportunity is required as such. I have considered the judicial pronouncement relied by Ld. AR that the audit report in form 10CCB can be submitted before the first appellant authority specially under the circumstances when loss was claimed in return of income which was converted into positive income by making addition by the assessing officer. Accordingly, the assessing officer is directed to allow deduction u/s 80IC as per law treating that the requirement of filing audit report in form no.10CCB is met."

7. We entirely agree with the above direction of learned CIT(A). The same is upheld.

8. In the result, both the appeals are deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 28.01.2019.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Revenue : Deputy Commissioner of Income Tax,
Central Circle-4, New Delhi.
2. Assessee : M/s Avichal Buildcon Pvt. Ltd.,
1711, S.P. Mukherjee Marg, Delhi – 110 006.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar