

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 6771/DEL/2015 (A.Y 2011-12)

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| Krishnapatnam Railway Co. Ltd. 245/247, 1 st Floor, August Kranti Bhawan, Bhikaji Cama Place New Delhi AADCK1428L (APPELLANT) | Vs | DCIT Circle-14(2) C. R. Building New Delhi. (RESPONDENT) |
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I.T.A. No. 6860/DEL/2015 (A.Y 2011-12)

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| DCIT Circle-14(2), Room NO. 317B, 3 rd Floor, C. R. Building, I.P. Estate New Delhi. (APPELLANT) | Vs | Krishnapatnam Railway Co. Ltd. 245/247, 1 st Floor, August Kranti Bhawan, Bhikaji Cama Place New Delhi AADCK1428L (RESPONDENT) |
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| Appellant by | Sh. Anil Jain, FCA & Sh. Ram Avtar Sharma, FCA |
| Respondent by | Ms. Shefali Swaroop, CIT DR |

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| Date of Hearing | 14.01.2019 |
| Date of Pronouncement | 20.02.2019 |

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 6/10/2015 passed by the CIT(A)-5, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

I.T.A. No. 6771/DEL/2015 (Assessee's appeal)

"1. That on facts and circumstances of the case the Ld.CIT(A) erred in upholding the act of A.O of denying the appellant carry forward of unabsorbed depreciation of Rs.6,96,52,145/- for Assessment Year 2009-10 & Rs. 14,34,52,539/- for Assessment Year 2010-11 aggregating to Rs. 21,31,04,684/-.

2. That on facts and circumstances of the case the Ld.CIT(A) erred in upholding A.O's act of taxing income of Rs. 8,20,74,197/- despite the fact that this amount was also taxed in Assessment Year 2012-13."

I.T.A. No. 6860/DEL/2015 (Revenue's appeal)

1. That the order of the learned CIT(Appeals)is erroneous & contrary to facts & law.

2. That On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in allowing the claim of depreciation during the year even when in the balance sheet, it is showing all the assets in work in progress.

3. That On the facts and in the circumstances of the case & in law, the Ld. CIT (A) has erred in allowing the interest income of Rs3,11,740/- to be adjusted against the unallowable depreciation of the current year.

4. That On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law in allowing additional ground of appeal regarding allowance of current years depreciation on WDV of assets arrived at without reducing the depreciation for AY 2009-10 & 2010-11 at Rs.18,26,81,877/- instead of unallowance depreciation.

5. That the appellant craves leave to add, to alter, or amend any ground (s) of the appeal raised above at the time of the hearing.

3. The assessee company was engaged in the business of Railway Transportation. The Assessee company filed its return for A.Y. 2011-12 on 24.09.2011 declaring income at Rs. 3,11,740/-. The case was processed u/s 143(1) of the Income Tax Act, 1961 on 16.01.2012. Assessee company filed its

revised return of income on 28.09.2012 declaring loss at Rs. 15,16,86,505/-. The case was processed u/s 143(1) of the Act on 02.03.2013 and subsequently, case was taken up for scrutiny under CASS. Notice u/s 143(2) of the Act dated 23.09.2013 was issued and served upon the assessee company. Subsequently, notice u/s 142(1) of the Act was issued on 25.11.2013 along with questionnaire and served upon the assessee's company. The Assessing Officer disallowed the depreciation claimed by the assessee company including brought forward depreciation and added the same to the income of the assessee.

4. Being aggrieved by the Assessment order, the assessee company filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the Assessee is a Company incorporated under the Companies Act 1956 on 11th October, 2006. The assessee was incorporated as a special purpose vehicle with the object of constructing, operating, maintaining and management of Obuvallirapalle-Krishnapatnam New Railway Line (Andhra Pradesh). This Railway line is to connect Krishnapatnam port to main railway line at Obuvallipalle directly. The object is to build Rail Infrastructure which includes de-bottlenecking of Golden Quadrilateral, providing - development of corridors to hinterland. The assessee company is a Government Company and has been promoted by Rail Vikas Nigam Ltd, a 100% Subsidiary of Ministry Railways (MOR), Govt, of Andhra Pradesh, Krishnapatnam Port Ltd. & National Mineral Development Corporation Ltd. The concession to built, run and maintain the railway line was granted to assessee by MOR vide concession agreement dated 23/11/2007. One of the terms of the concession agreement was that the Operation & Maintenance (O&M) of the proposed line was to be handed over to South Central Railway (SCR) on the terms as may be decided in accordance with Railway Rules. Kindly see clause (p) of sub article 4.3 under the heading Obligations of KRCL of Concession Agreement. As per Constitution of India

only Central Government can run Railways in India as per entry 22 of List I, of the Constitution of India. The assessee company got the Railway line constructed and handed over the same to South Central Railway (SCR) for Operation & Maintenance (O&M) of the aforesaid railway line. This Railway line came into operation in November 2008. The same was pointed out by the Ld. AR at note no 2A of Schedule 7 being Notes to Accounts as given in B/sheet. Sharing of revenues between the assessee company, SCR and various railway zone took prolonged discussion before the same could be finalized. The agreement of O & M between the assessee company & SCR was signed on 12/01/2012. The impugned year is A.Y. 2011-12 i.e. for the previous year ending 31.03.2011. Thus, agreement was signed almost one year after the closure of the financial year. Due to this reason Revenues and Expenditure up to March, 2011 could not be depicted in the accounts. This fact was disclosed in Note 4 pertaining to Accounting policy and note 2A pertaining to notes to accounts. SCR for the first time rendered the accounts for the period November 2008, to November 2011 vide its letter dated 09/05/2012. Due to these peculiar circumstances the assessee company had no option but to incorporate revenue and expenditure from November 2008, to March 2011, for those years in the accounts for the year ended March 2012. The Revenues and Expenditure prior to 31st March, 2011 could not be depicted in the respective years accounts as prior to this date those accounts were closed. The Accounts for those years were finalized, declaring nil income & expenditure, to meet compliance of filing income tax returns and on due dates and filing annual return of the company with Registrar of Companies. It is pertinent to note that in all these years there was income without considering depreciation. The income for the period November 2008 to 31/03/2012 was declared and taxed in AY 2012-13. However, no depreciation was claimed for the period AY 2009-10 to 2011-12. The assessee company in its wisdom revised return for AY 2011-12 and claimed depreciation for the period AY 2009-10 amounting to RS 6,96,52,145/- & Rs 14,34,52,539/- for 2010-2011 aggregating to RS 21,31,04,684/- as brought forward depreciation, simultaneously it also

claimed current year depreciation i.e. for AY 2011-12 amounting to RS 15,16,86,505/-. However, revenue for the year under consideration amounting to Rs 8,20,74,197/- was not declared in the revised return of income as the same had already been declared in the return for AY 2012-13 along with preceding year income for AY 2009-10 & AY 2010-11. This was done so that AY 12-13 return of income matches with the accounting results of that year. The entire facts with all supporting documents were submitted to the Assessing Officer during the assessment proceedings. Unfortunately, while passing the assessment order for the impugned year AO treated Net receipts of Rs 8,20,74,197/- earned from running of Railway line during the year as income of the assessee company but at the same time did not allow depreciation of Rs.15,16,86,505/- computed on assets owned & used in earning the income, for the year. The Assessing Officer also denied the assessee company the claim of unabsorbed depreciation for AY 09-10 & AY10-11 Depreciation of Rs 15,16,86,505/- for the impugned year was computed on WDV of assets as reduced by depreciation claimed for AY 09-10 & AY 10-11.

6. The Ld. AR in respect of Department's Appeal submitted that the Assessing Officer was informed about entire revenue expenditure pertaining to 2008 to 2011 which was disclosed in the accounts for the year ending 31/3/2012 and offer to tax in that year and there has been no loss of Revenue. This aspect was taken note by the Assessing Officer in his order. Thus, the Assessing Officer on the basis of South Central Railway Letter taxed income of Rs. 8,20,74,197/- pertaining to the Assessment Year 2011-12 under the head business. Thus, the Ld. AR submitted that when Assessing Officer is admitting that the assessee has conducted business operations during the year then how in the same basis he disallowed depreciation since it has not been used the assets during the year for the purposes of its business. In-fact, the assessee conducted business in this year as well which was an admitted fact by the Revenue authorities. The Ld. AR relied upon the decisions of the K. M. Sugar Mills Ltd. 373 ITR 42, CIT(A) Vs. Bhrat Carbon & Ribbon Manufacturing

Company Ltd. 239 ITR 535 Supreme Court and Kedarnath Jute Mills Ltd. 82 ITR 363. The Ld. AR also relied upon the case of Tuticorin Alkali Chemicals Vs. CIT(A) 227 ITR 172 (S.C). The Ld. AR submitted that the Assessing Officer's main contention of disallowance of depreciation to the assessee is that in accounts fixed assets have not been capitalized nor any depreciation has been charged. If this plea is accepted then the Assessing Officer should also not taxed revenue for the year as the same has not been incorporated in accounts. The Ld. AR submitted that it is an admitted fact that under the head fixed assets assessee should have classified completed assets separately and assets under construction separately. However, mere erroneous classification of assets cannot deprive assessee of its legitimate claim of depreciation. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT(A) Vs. Hindustan Coca Cola Beverages Pvt. Ltd. 331 ITR 192. Thus, the Ld. AR submitted that the CIT(A) rightly allowed the assessee its claim of current year depreciation. As regards set up of interest income amounting to Rs.3,11,740/-. The Ld. AR submitted that when the same is held business income it can be set up against losses under the head business as per the provisions of Section 17 and if it is held as income from other sources since the assessee has unabsorbed depreciation, the same can easily be set off against the same. As regards the current year depreciation on return down value without reducing written down value by depreciation claimed for preceding years. The Ld. AR submitted that depreciation for the year should be allowed on written down value of assets as on 1/4/2011 + value of addition of fixed assets made during the year less sale value of assets during the year less amount of depreciation actually allowed to assessee during preceding years. The Ld. AR relied upon the decision of Madeva Upendra Sinai Vs. UOI 98 ITR 209 Supreme Court as well as CIT(A) Vs. Doom Doma India Ltd 310 ITR 392. As regards assessee's appeal is concerned. The Ld. AR submitted that the assessee relied upon the order of the CIT(A).

7. The Ld. DR submitted that the order of the CIT(A) as well as the

Assessing Officer.

8. We have heard both the parties and perused the material available on record. The CIT(A) held as under:

“5.1.2. I have given careful consideration to the submissions of the appellant. The operation income of the appellant is earned from revenue generated from freight transportation. Revenue has been generated only when the assets in the form of station building, permanent way, plant and machinery and other assets have been put to use. Therefore, even though in the original return as well as revised return, the appellant has shown the entire fixed assets as capital work in progress, the depreciation thereon is still allowable under the provisions of Explanation 5 to section 32 wherein the legislature clarified by Finance Act, 2001 w.e.f. 01.04.2002, as a matter of abundant precaution, that depreciation is allowable, irrespective of the fact as to whether or not the assessee has claimed the deduction in the computation of total income. Moreover, as the appellant has rightly stated, the Supreme Court in the case of Kedarnath Jute Mills (82 ITR 363) has taken the view that whether or not assessee entitled to a particular deduction depends on the provision of law relating thereto and not the view the assessee might take of his rights nor can the existence or absence of entries in the books of accounts be decisive or conclusive in the matter. The Supreme Court in the latest decision of KM Sugar Mills Ltd. (373 ITR 42) has held that when the assessee had proved the ownership and user of gas cylinders for business purposes and the income from leasing of gas cylinders was treated as business income, the assessee was entitled to depreciation u/s 32 and the mere fact that the assessee’s own manufacturing unit has not started functioning would not be material to issue. Prima facie, the AO is right in his contention that appellant should have classified amount spent on construction of its railway track under fixed assets and charged depreciation on the same in its accounts. But due to peculiar circumstances of the case, the same could not be done, as final quantification of liability incurred in this regard could not be finalized at

the time of preparation of accounts for the year. This aspect of the matter has been clarified by the appellant in its accounts and reproduced by the AO in his order. Mere quantification and classification in accounts cannot deter appellant from claiming depreciation when factually the assets has been put to use since 2008, as per the account statement rendered by South Central Railways. In the present case, the appellant has earned certain income of Rs. 8,20,74,197/- during the year which has rightly been brought to tax by the AO, as income from business and hence, depreciation ought to be allowed for the current year. The AO is directed to do so, subject to the findings on the quantum of depreciation to be allowed, at Para 6.2.3 hereinafter.

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6.2.3. *In the return of income the appellant has claimed depreciation for AY 2011-12 at Rs. 15,16,86,055/- after reducing depreciation for AY 2009-10 & 2010-11. Since I have not allowed depreciation to the appellant for AYs 2009-10 & 2010-11, I agree with the AR that WDV for AY 2011-12 should be taken without reducing depreciation for those years. This position arises because of definition of WDV given in section 43(6) as reproduced above in the appellant's written submissions. No depreciation has been allowed to the appellant for AYs 2009-10 & 2010-11, therefore that amount cannot be reduced while computing WDV for the year. The appellant's case is also supported by the Supreme Court decision in the case of *Madeva Uppendra Sinai v UOI* 98 ITR 209, 233 (SC) as relied by appellant.*

6.2.4. *In conclusion while ground 2(i) and (iii) are allowed, ground 2(ii) is dismissed. In other words, the AO would allow depreciation on the WDV for A.Y. 2011-12 without reducing any depreciation for earlier years. Cumulatively, therefore, ground no 2 is treated as partly allowed.*

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8.1.2. *Therefore, so far as the charge to tax of the income for the year is concerned the AO's action is confirmed. Since I have allowed depreciation to the appellant for the year under challenge, all the other limbs of the grounds stands answered. As far the question of taxing income of Rs. 8,20,74,197/- in*

AY 2011-12 & 2012-13 twice is concerned, I agree with the appellant that it amounts to double taxation which is prohibited by law. This proposition of law has also been laid down in the under mentioned decisions as relied upon by the appellant:-

- *LAXMIPAT SINGHANIA v CIT 72 ITR 291, 294 (SC)*
- *BHIM SEN KHOSLA v CIT 133 ITR 667 (DEL)*
- *PT. SHEONATH PRASAD SHARMA v CIT 66 ITR 647 (ALL)*
- *ARK INVESTMENTS LTD v ITO 13 ITD 65 (CHENNAI)*
- *R. NATRAJAN v ACIT (TS-386-ITAT-2012) (CHNY)*
- *CIT v. NAGARJUNA FERTILIZERS & CHEM LTD. 373 ITR 252 (T&AP)*

8.1.3 Since it has been held that the said income has to taxed in this year however, the appellant is at liberty to seek remedial action in AY 2012-13 for deletion of the amount of Rs. 8,20,74,197/- from the assessed income of that year. With these observations ground no. 4 is treated as partly allowed.”

The CIT(A) rightly observed that mere quantification and classification in accounts cannot deter assessee from claiming depreciation when factually the assets has been put to use since 2008, as per the account statement rendered by South Central Railways. In the present case, the assessee has earned certain income of Rs. 8,20,74,197/- during the year which has rightly been brought to tax by the Assessing Officer, as income from business and hence, depreciation ought to be allowed for the current year. The CIT(A) rightly directed the Assessing Officer to allow the quantum of depreciation. Thus, the order of the CIT(A) is reasoned order and there is no need to interfere with the same. Hence, appeal of the assessee as well as Revenue is dismissed.

9. In result, the appeal of the Revenue and assessee are dismissed.

Order pronounced in the Open Court on 20th FEBRUARY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 20/02/2019
*R. Naheed **

Copy forwarded to:

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2. Respondent
3. CIT
4. CIT(Appeals)
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ASSISTANT REGISTRAR

ITAT NEW DELHI

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| Date on which the typed draft is placed before the dictating Member | 15 .01.2019 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | 20 .02.2019 |
| Date on which the final order is uploaded on the website of ITAT | 20 .02.2019 |
| Date on which the file goes to the Bench Clerk | 20 .02.2019 |
| Date on which the file goes to the Head Clerk | |