

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD

BEFORE, SHRI MAHAVIR PRASAD JUDICIAL MEMBER
And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3352/AHD/2015

अाधायण वष/Asstt. Year: 2011-2012

M/s Cera Sanitaryware Ltd. Madhusudab House, Opp. Navrangpura Tel. Exchange, Navrangpura, Ahmedabad-380006. PAN: AABCM9244N	Vs.	Pr. Commissioner of Income Tax, C-wing, 303, 3 rd floor, Pratyakshkar Bhawan, Ambawadi, Ahmedabad-3800015.
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(Applicant)		(Respondent)
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Assessee by :	Ms. Urvashi Shodhan, A.R
Revenue by :	Shri O.P. Sharma, CIT.DR

सुनवाई का ताराख/Date of Hearing : 26/12/2018
घोषणा का ताराख /Date of Pronouncement: 01/02/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Principal Commissioner of Income Tax, Ahmedabad [CIT in short], dated 16/10/2015 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 31/01/2014 relevant to Assessment Year (AY) 2011-12.

2. The solitary issue raised by the assessee in all the grounds of appeal is that the Ld.CIT erred in holding that the order of the AO as erroneous in so far prejudicial to the interest of Revenue.

3. Briefly stated facts are that the assessee is a limited company and engaged in the business of manufacturing of sanitary wares, traders in accessories tap and tiles and generation of electricity. The assessment for the year under consideration was completed u/s143(3) of the Act, vide order dated 31/01/2014, at Rs. 42,16,17,750/- after making certain addition to the total income of the assessee. The assessee in the year under consideration has claimed accelerated depreciation at the rate of 80% on the fixed asset namely Air Compressor and captive power plant which was allowed in the assessment framed u/s 143(3) of the Act.

4. However, the Ld CIT 263 of the Act was of the view that the depreciation at the rate of 80% is allowable only in the case of energy saving devices as enumerated in clause 8 (ix)A of new Appendix I of Income Tax Rules. But items of the fixed assets on which assessee claimed depreciation at the rate of 80% does not fall in the category of energy saving devices as prescribed under the Income Tax Rules. Therefore the Ld.CIT was of the view that assessment was framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of Revenue.

4.1 Accordingly the Ld. CIT u/s 263 of the Act issued a notice dated 20/08/2015 proposing the order of the AO as erroneous and prejudicial to the interest of Revenue for non-application of mind of the AO while granting depreciation at the rate of 80% on the above items.

4.2 The assessee submitted that the assessment was framed after due verification of the necessary facts by the AO. Thus the AO after getting

satisfied allowed the depreciation at the rate of 80% on the value of the above items.

4.3 The assessee also claimed that the impugned fixed assets fall in the category of Part A of III, Machinery and Plant in clause 8(ix)(G) & (D) of the appendix- I. The assessee claimed that category of clause 8(ix) A deals with the glass furnace which is not applicable to it.

4.4 Because of the above the assessee claimed that the order of the AO had been proposed to be held as erroneous and prejudicial to the interest of Revenue by the Id. CIT is merely on the change of opinion which is not permitted under the provision of Law.

4.5 However, the Ld. CIT disagreed with the submission of the assessee and held that it is eligible for depreciation at the rate of 15% only. Accordingly the Id. CIT worked out excess depreciation claim by the assessee of Rs. 1,65,72,958/-. The Ld. CIT further directed AO to disallow the claim of the assessee on account of depreciation as discussed above and add to the total income of the assessee.

5. Being aggrieved by the order of the Ld.CIT assessee is in appeal before us.

6. The Ld.AR before us filed a paper book running from pages 1 to 110 and also submitted that a detailed reply dated 24/09/2013 in response to the notice issued under section 142(1) of the Act along with respective purchase bills, transport vouchers, installation certificate & relevant literature of the product was filed to the AO during the assessment proceedings.

6.1 After that the Ld. AO after examining & verifying product literature and other material filed by the assessee took a view to allow 80% depreciation on Air Compressors/Captive Power Plant.

6.2 Accordingly it was claimed by the assessee that the invocation of revisionary powers u/s 263 to hold scrutiny order as erroneous & prejudicial on account of non-verification is not permissible.

6.3 The Ld. AR referred to Appendix I of Income Tax Rules where under category III details of plant & machinery were shown in which energy saving devices were detailed at Sr. No. 8(ix) of that Appendix, which is as under:

- A. Specialized Boilers and furnaces
- B. Instrumentation and monitoring system for monitoring energy flows
- C. Waste heat recovery equipment
- D. Co - generation Systems
- E. Electrical equipment
- F. Burners
- G. Other equipment

6.5 However, Ld. CIT held that 80% depreciation on Air Compressor & Captive Power Plants was not allowable since none of these types of machinery fall under the category enumerated in 8(ix)A of New Appendix-1 of I.T. Rules.

6.6 He further submitted that the Ld. CIT has applied the wrong category of machinery to hold that the order of the Ld.AO is erroneous and prejudicial to the interest of Revenue.

6.7 In fact, the category enumerated in 8(ix)A refers to specialized boilers and furnaces whereas the appellant has claimed higher depreciation in the group 'D' and 'G' of category 8(ix) i.e. under Co-generation system for captive power plant & Other equipment for Air-Compressor.

6.8 The Ld.AR further submitted that the object of providing higher depreciation @ 80% is for the reason of saving of energy by using plant and machinery which are technically and technologically advanced. The machinery manufacturer identifies a product name according to the trade name and the general names which are prevalent with the actual users/purchasers. Thus the name of the machines cannot be the criteria for holding the machine as an energy saving device. As such, the actual use of the machine resulting the energy saving will justify the accelerated depreciation.

6.9 The Ld. AR, further put his reliance on the order of this Co-ordinate Bench of the ITAT, Vizhakatpattanam in ITA No. 577/Viz/2014 in the case of Sri Sarvaraya Sugars Ltd. wherein it was held that co-generation systems include Captive Power Plant.

6.10 Accordingly, the Ld. Counsel for the assessee submitted that AO after examination of product literature and its use took a view allowing depreciation @ 80%. The Ld CIT technically misunderstood the usage of the types of machinery used by the assessee and took a different view to invoke revisionary proceedings holding the order erroneous on a debatable issue

which also not prejudicial to the interest of Revenue especially when the allowance of higher depreciation in the first year is Revenue neutral exercise. He further relied upon the order of Honøble Supreme Court in the case of Excel Industries 358 ITR 295 (SC)].

7. On the other hand Ld. DR vehemently supported the order of authorities below.

8. We have heard the rival contentions and perused the materials available on record. The assessee in the instant case has claimed depreciation at the rate of 80% on the air compressor and captive power plant. As per the assessee, these types of equipment are energy-saving devices. Therefore, these are eligible for depreciation at the rate of 80% as per clause 8(ix) of new appendix I of IT rules.

8.1 However, the CIT under section 263 of the Act was of the view that the items described above do not fall in the category of clause 8(ix)A of new appendix I of IT rules. Therefore, the assessee is not eligible for accelerated depreciation on such devices. Accordingly, the Ld. CIT has held that the order of the AO is erroneous insofar prejudicial to the interest of the Revenue.

8.2 Now the controversy arises for our adjudication whether the order of the AO is erroneous and prejudicial to the interest of the Revenue in the given facts & circumstances. In this regard, we find that the assessee is eligible to claim the depreciation at 80% on the energy saving devices. But the onus lies on the assessee to prove on the basis of the documentary evidence that these are energy saving devices. Merely filing the literature on the energy saving devices is not sufficient to claim the depreciation at the rate of 80%. The

assessee should provide the information demonstrating the energy saved from the use of such devices. But the assessee has not given such information either to the AO or to the Id. CIT during the proceedings. Therefore, we do not find any reason to disturb the finding of the Id. CIT under section 263 of the Act. Hence, the ground of appeal of the assessee is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 01/02/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 01/02/2019

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आदेश क० प्रतिलिपि पोषत/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT
5. त्रिभागीय प्रत्यक्ष, आयकर अपीलार्थी अधीकरण / DR, ITAT,
6. गार्डफाइल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलार्थी अधीकरण, अहमदाबाद / ITAT, Ahmedabad