



ITA No.7268/Mum/2017
M/s. Positive Packaging Industries Ltd.
Assessment Year :2013-14

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.7268/Mum/2017

(निर्धारण वर्ष / Assessment Year:2013-14

DCIT-14(2)(1) 432, Aaykar Bhavan 4 th Floor, M.K. Road Mumbai-400 020.	बनाम/ Vs.	M/s. Positive Packaging Industries Ltd. 98, Jolly Maker Chamber 2 225, Nariman Point Mumbai-400 021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACP-2836-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Abhi Ram Kartikeyan - Ld.DR
Respondent by	:	Bhamik Goda – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	18/03/2019
घोषणा की तारीख / Date of Pronouncement	:	22/03/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.*



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CIT(A)-8/IT-490/16-17 dated 09/10/2017 on following effective grounds of appeal: -

1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the balance additional depreciation of Rs.1,02,28,246/- u/s 32(l)(iia) of the IT Act, pertaining to Plants & Machineries acquired and installed in the immediately preceding year but were put to use for less than 180 days in that year.
2. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in giving retrospective effect to the third proviso below clause (ii) to sub section (i) of section 32.
3. The appellant prays that the order of CIT(A) on the above ground be reversed and that of the Assessing Officer be restored."

The assessment for impugned AY was framed by Ld. Assistant Commissioner of Income Tax-Circle 3(2)(2), Mumbai [AO] u/s 143(3) on 29/12/2016 wherein the income of the assessee was determined at Rs.102.28 Lacs under normal provisions after disallowance of additional depreciation for Rs.102.28 Lacs as against *Nil* return e-filed by the assessee on 28/11/2013. The assessee being *resident corporate entity* was stated to be engaged in *manufacturing of flexible packaging material, printing cylinders & metallized films*.

2. During assessment proceedings, upon perusal of depreciation schedule, it transpired that the assessee claimed additional depreciation of Rs.102.28 Lacs u/s 32(1)(iia) on the additions made in fixed assets used for the period of less than 180 days in AY 2012-13. Similar claim was made in the impugned AY and therefore, Ld. AO proceeded to disallow the same on the ground that the concerned plant & machinery was already used in various preceding years and it was no longer new plant & machinery. Although the assessee defended the same on the strength of certain judicial pronouncements, however, not convinced, the



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additional depreciation was disallowed and added to the income of the assessee.

3. The Ld. first appellate authority, relying upon its own decision in assessee's own case for AY 2012-13, allowed the assessee's claim. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], at the outset, drew attention to the fact that the Tribunal has confirmed the stand of Ld. first appellate authority for immediately preceding AY 2012-13 vide *ITA No. 6360/Mum/2017 dated 31/01/2019* and therefore, the matter stood covered in assessee's favor. Although Ld. DR supported the stand of Ld. AO but failed to controvert the aforesaid submissions.

5. In view of the admitted position, respectfully following the earlier view of co-ordinate bench of the Tribunal vide *ITA No. 6360/Mum/2017 dated 31/01/2019*, we dismiss the appeal.

6. The appeal stands dismissed.

Order pronounced in the open court on 22nd March, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22/03/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



ITA No.7268/Mum/2017
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आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**