IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai

Before Shri Pawan Singh, Judicial Member
and Shri Ramit Kochar, Accountant Member

ITA No.7370/Mum/2016
(Assessment Year: 2012-13)

M/s TCPL Packaging Ltd. Empire Mills Complex, 414, Senapati Bapat Marg, Lower Parel, Mumbai – 400013 PAN – AAACT1406E	v.	Deputy Commissioner of Income Tax- 8(3)(1) Mumbai
(Appellant)		**(Respondent)**

Appellant by: Ms. Dinkle Haria &
Shri Shubham Rathi, A.Rs

Respondent by: Shri V. Justin, D.R

Date of Hearing: 15.04.2019
Date of Pronouncement: 22.04.2019

O R D E R

PER RAMIT KOCHAR,ACCOUNTANT MEMBER

The present appeal filed by the assessee is directed against appellate order dated 30.09.2016 passed by learned Commissioner of Income-tax(Appeals)-14,Mumbai (hereinafter called "the CIT(A)") bearing Appeal Number CIT(A)-14/IT-80/15-16 , which in turn arises from assessment order dated 13.03.2015 passed by the A.O under Section 143(3) of the Income-tax Act, 1961 (for short ' the Act').

2. The assessee assailing the appellate order of learned CIT(A) has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Mumbai(hereinafter called "the tribunal"):-

"1. The Learned Commissioner of Income Tax-(Appeals) (the 'Ld. CIT (A)') erred in law and on the facts in upholding the Disallowance of Additional Depreciation u/s 32(1)(iia) of the Income Tax Act, 1961 (the 'Act') of Rs. 20,24,313 as made by the Learned Assessing Officer (the 'LAO').

2. The Ld. CIT(A) erred in upholding the disallowance made by the LAO under section 32(1)(iia), by restricting the claim of additional depreciation to 50% as per second proviso to section 32(1)(iia) instead of l00%.

3. The Ld. CIT (A) failed to appreciate the purpose and intent of such beneficial provision introduced by the legislation, which is to provide incentives for investment in industrial sector and thereby increase the industrial growth. Being a beneficial provision, such benefit cannot be denied arbitrarily by the LAO.

4. The Ld. CIT(A) erred in not adjudicating fresh claim of balance 50% additional depreciation amounting to Rs.29,92,833/- for plant and Machinery acquired and installed in Assessment year(AY) 2011-12 but used for less than 180 days, despite of CIT(A)'s own order for AY 2011-12, wherein it was held that additional depreciation on assets acquired and used for less than 180 days should be restricted to 50% of rate in the current year and balance shall be allowed to be carried forward and claim in the subsequent year. Thus, thereby Ld. CIT(A) erred in not allowing fresh claim of additional depreciation carried forward of previous years by contradicting his own decision of AY 2011-12.

5. The appellant craves leave to add to alter or otherwise amend the above mentioned ground of appeal."

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of printed packaging material i.e Hinge Lid Packs, Shells, Cartons, Tucks etc. on paper board. The short question which has arisen in the this appeal for our adjudication is with respect to allowability of additional depreciation under Sec.32(1)(iia) of the 1961 Act. The assessee has claimed additional depreciation of Rs. 6,48,97,045/- in the return of income filed with Revenue, out of which additional depreciation under Sec.32(1)(iia) of Rs.6,08,48,418/- pertained to new plant and machinery which were acquired and installed during the year under consideration and were put to use by the assessee for a period of 180 days or more. There is no dispute between rival parties so far as allowability of additional depreciation u/s 32(1)(iia) to the tune of Rs. 6,08,48,418/- on new plant and

machinery which were acquired and installed during the year under consideration and put to use by the assessee for 180 days or more . The dispute has arisen between rival parties as to the claim of additional depreciation of Rs.40,48,626/- claimed by the assessee u/s 32(1)(iia) of the 1961 Act with respect to new plant and machinery which were acquired and installed during the year under consideration but was put to use for less than 180 days , as the assessee claimed additional depreciation at stipulated rate of 20% while the AO allowed 10% (being 50% of 20% stipulated rate) on the ground that aforesaid new plant and machinery was put to use for less than 180 days in view of second proviso to Section 32(1)(iia) of the 1961 Act . The A.O allowed 50% of additional depreciation of stipulated rate of 20% i.e. 10% on aforesaid new plant and machinery which were put to use for less than 180 days and rest of the additional depreciation to the tune of Rs.20,24,313/- stood disallowed by the AO and added back to the income of the assessee, vide assessment order dated 13.03.2015 passed by the AO u/s 143(3) of the 1961 Act.

4. The assessee filed first appeal with learned CIT(A) which was dismissed by the ld. CIT(A) as in the opinion of learned CIT(A) there is no provision in the statute for allowing additional depreciation beyond the first year in which the new plant and machinery was first put to use and hence the contention of the assessee with respect to disallowance of additional depreciation of 50% of stipulated rate of 20% i.e. 10% on the ground that new plant and machinery was put to use for less than 180 days also stood dismissed by learned CIT(A) keeping in view provisions of Section 32(1)(iia) of the 1961 Act read with second provisio to Section 32(1) of the 1961 Act. The assessee also made claim before learned CIT(A) for allowing additional depreciation of Rs.29,92,833/- in AY 2012-13 for the new plant and machinery acquired and installed in immediately preceding

assessment year viz. AY 2011-12 but was put to use for less than 180 days in the immediately preceding year i.e. AY 2011-12 for which only additional depreciation to the tune of 10% (50% of stipulated rate of 20%) stood allowed in AY 2011-12 while the rest of the additional depreciation stood disallowed in AY 2011-12, which also did not found favour with learned CIT(A) and the rest of the aforesaid additional depreciation for AY 2011-12 which was disallowed in AY 2011-12 for putting to use new plant and machinery for less than 180 days was not allowed as deduction in AY 2012-13 as the learned CIT(A) was of the view that said ground did not arise from the assessment order passed by the AO and the appeal of the assessee on this ground also stood dismissed, vide appellate order dated 30.09.2016 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 30.09.2016 passed by learned CIT(A) , the assessee has filed second appeal with the tribunal.

5.2 At the outset ld. Counsel for the assessee stated before the Bench that she does not want to press ground of appeal No. 1 to 3 raised by the assessee in memo of appeal filed with the tribunal and prayer is made to dismiss ground no. 1 to 3 raised by the assessee in memo of appeal filed with the tribunal. The learned DR did not raised any objection to dismissal of ground number 1 to 3 raised by the assessee in memo of appeal filed with the tribunal. After hearing both the parties and considering material on record, we dismiss ground number 1 to 3 raised by the assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

5.3 With respect to ground no. 4 raised by the assessee in memo of appeal filed with the tribunal, it is claimed by learned counsel for the assessee that the assessee be allowed additional depreciation under Sec. 32(1)(iia) of the 1961 Act to the tune of 50% of stipulated rate of

20% i.e. 10% with respect to new plant and machinery which was acquired and put to use for less than 180 days in preceding year i.e. AY 2011-12 as the assessee was only allowed the benefit of additional depreciation @10% in the AY 2011-12 for the said new plant and machinery which were acquired and put to use for less than 180 days in AY 2011-12 and it should be allowed to claim said additional depreciation of Rs. 29,92,833/- in AY 2012-13. It was submitted that Section 32(1)(iia) allows additional depreciation @20% on new plant and machinery acquired and put to use but since in preceding year AY 2011-12, some of the new plant and machineries were acquired and put to use for less than 180 days, the assessee was allowed only 50% of the stipulated rate of 20% i.e. 10% additional depreciation on such new plant and machinery in AY 2011-12 while the rest of the additional depreciation which was disallowed in AY 2011-12 be allowed in the impugned assessment year i.e. AY 2012-13. It is claimed that Rs. 29,92,833/- is the additional depreciation u/s 32(1)(iia) of the 1961 Act which remained disallowed in AY 2011-12 which is to be allowed in this year i.e. AY 2012-13. Similarly on the same analogy, it is submitted that the assessee be allowed to claim rest of the additional depreciation u/s 32(1)(iia) of Rs. 20,24,313/- which stood disallowed in the impugned assessment year AY 2012-13 on the ground that new plant and machinery acquired during the year was put to use for less than 180 days, in the succeeding assessment year i.e. AY 2013-14. The assessee submitted that the tribunal in assessee's own case in ITA No. 5403 & 5404/Mum/2016 for A.Y. 2009-10 and 2011-12 respectively vide common order dated 23.02.2018 has allowed claim of the assessee.

5.4 The ld. D.R. on the other hand fairly did not raise objection to allowability of the claim of aforesaid additional depreciation subject to verification by the AO .

5.5 We have heard rival contentions and perused the material on record including cited orders of the tribunal. We have observed that the assessee is engaged in the business of manufacturing of printed packaging material i.e. Hinge Lid Packs, Shells, Cartons, Tucks etc on paper board. We have observed that the assessee has acquired and installed new plant and machineries during the year under consideration which undisputedly are entitled for additional depreciation under Sec.32(1)(iia) of 20% , but since the Plant and Machinery were put to use for less than 180 days in AY 2012-13, the authorities below rightly allowed additional depreciation @ 50% of the stipulated rate of additional depreciation of 20% i.e. 10% keeping in view second proviso to Section 32(1) of the 1961 Act during the impugned assessment year , as against stipulated rate of additional depreciation on new plant and machinery of 20% provided under Section 32(1)(iia) of the 1961 Act , hence consequently balance additional depreciation @ 10% on such new plant and machinery will be allowed in immediately succeeding year i.e A.Y. 2013-14, subject to verification by the AO. On the same analogy what remained to be allowed in immediately preceding assessment year i.e. AY 2011-12 i.e. additional depreciation @10% (being 50% of stipulated rate of 20%) on the ground that new plant and machinery acquired during AY 2011-12 was put to use for less than 180 days , the remaining claim of depreciation @10% shall be allowed in the year under consideration , subject to verification by the AO. We have also observed that now amendment is brought in statute in Section 32 of the 1961 Act by insertion of third proviso to Section 32(1) by Finance Act, 2015 w.e.f. 01.04.2016, wherein it is provided that the assessee will be entitled for claiming rest of the additional depreciation in immediately succeeding year which could not be allowed in the year of acquisition on the ground that the said new plant and machinery was put to use for less

than 180 days. The Hon'ble Madras High Court in the case of CIT v. T.P.Textiles Private Limited (2017) 394 ITR 483(Mad.) has held the said proviso to be clarificatory in nature, by holding as under:

> ***"10.*** *According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.*
>
> ***10.1*** *The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.*
>
> ***10.2*** *As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.*
>
> ***10.3*** *The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:*
>
> > *".... 32. (1) ……*
> >
> > *Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia)for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: ……." (Emphasis is ours)*
>
> ***11.*** *We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.*
>
> ***11.1*** *The relevant part of the Memorandum is extracted hereafter:*
>
> > *" ……. To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.*

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2 *A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.*

11.3 *In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.*

11.4 *We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.*

11.5 *In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days.*

12. *Thus, having regard to the foregoing discussion, we are of the view that no interference is called for with the impugned judgment of the Tribunal.*

13. *The appeal is, accordingly, dismissed."*

The Mumbai-tribunal in assessee's own case for A.Y. 2009-10 and 2011-12 in ITA Nos. 5403 and 5402/Mum/2016 , vide common order dated 23.02.2018 has decided this issue in favour of the assessee wherein tribunal followed the decision of Hon'ble Madras High Court in the case of CIT v. Shri T.P.Textiles Private Limited (2017) 394 ITR 483(Mad.) and also order of the Mumbai-tribunal in the case of Rashtriya Chemicals and Fertilizers Limited v. CIT in ITA no. 5160/Mum/2014 dated 29.06.2016 to hold in favour of the assessee, by holding as under :

"7. We have heard the rival submissions and perused the orders of the authorities below and the decisions relied upon. The AO while completing the assessment disallowed 50% of additional depreciation which was claimed by the assessee during the current assessment year on the plant and machinery which was installed in the preceding assessment year and was put to use

after 30th September whereby it has been used for less than 180 days. According to the AO the additional depreciation is allowable only in the year of installation and put to use the machinery and since the assessee installed the machinery after 30th September and was put to use for less than 180 days the assessee is entitled only for 50% of additional depreciation in the year of installation and the assessee is not entitled for the remaining 50% of additional depreciation in the subsequent assessment year. The learned CIT(A), following the decision of the Coordinate Bench, held that the assessee is entitled for 50% additional depreciation in the subsequent assessment year which was not allowed in the preceding assessment year due to the assessee company used the assets for less than 180 days and also the decision of the Delhi Tribunal in the case of Cosmo Films Ltd. (supra) and SIL Investment Ltd. (supra). The question of whether the assessee is entitled for balance 50% of additional depreciation in the subsequent assessment year has been decided by the Hon'ble Madras High Court in the case of Shri T.P. Textiles (P.) Ltd., (supra). The Hon'ble High Court has held that the plain language of Section 32(1)(iia) read along with the relevant proviso will lead to conclusion that there is no limitation placed on the assessee claiming 10% of additional depreciation in the succeeding assessment year. While holding so the Hon'ble High Court observed as under: -

> *"7.4. In order to appreciate the issue at hand, relevant provisions of Section 32 of the Act, to the extent applicable in the A.Y. in issue, would be required to be noticed :*
>
> *"Section 32 (1) In respect of depreciation of –*
>
> *(i) buildings, machinery, plant or furniture, being tangible assets;*
>
> *(ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed –*
>
> *"(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;*
>
> *(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:*
>
> *Provided ....*
>
> *(a) & (b)....*
>
> *Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this subsection in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:*
>
> *Provided also & Explanation 1 to Explanation 5*
>
> *(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by*

an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

Provided ....." (Emphasis is ours)

8. Pertinently, the Karnataka High Court, in a decision rendered in the case of CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has interpreted the aforesaid provision, in particular, the proviso incorporated therein. The Karnataka High Court, in the said case, has come to the conclusion that additional depreciation granted under clause (iia) of Section 32(1) of the Act is for the purpose of affording benefits to the Assessees and, to encourage industrialization, either by setting up a new industrial unit, or, by expanding a new industrial unit, by purchasing and installing a new machinery, or, plant, and putting the same to use for the purposes of business.

8.1. The Court, went on to say, that while, the proviso appearing in Section 32(1) restricts the claim of depreciation to 50% of the amount calculated at the percentage prescribed for an asset referred to in clause (iia), nowhere does it restrict allowance of the balance 50% of the additional depreciation, which in percentage terms, would be 10% in the succeeding A.Y.

8.2. The relevant observations made by the Division Bench of the Karnataka High Court in the case of CIT V. Rittal India (P.) Ltd., as contained in paragraphs 7, 8 and 9 of the said judgment, for the sake of convenience are extracted hereafter :

"..... 7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.

8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been down away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, if nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed....."

9. We are in respectful agreement with the view taken by the Division Bench of the Karnataka High Court, passed in CIT V. Rittal India (P.) Ltd.

10. According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.

10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.

10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

10.3. The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:

".... 32. (1) .....

Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: ....." (Emphasis is ours)

11. We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.

11.1. The relevant part of the Memorandum is extracted hereafter:

"..... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2. A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

11.3. In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4. We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5. In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days."

8. As can be seen from the above decision the Hon'ble Madras High Court, following the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Rittal India (P) Ltd. (380 ITR 423) and also considering the amendment brought in by way of proviso to section 32(1) wherein it has been specifically stated that 50% of additional depreciation which was not allowed in the preceding assessment year shall be allowed in the subsequent assessment year, concluded that the assessee is entitled for additional 50% depreciation in the assessment year which follows the assessment year in which the machinery had been bought and put to use for less than 180 days. We also found that the Coordinate Bench in the case of Rashtriya Chemicals and Fertilizers Ltd. (supra) has taken similar view following the decision of the the Hon'ble Karnataka High Court in the case of CIT vs. Rittal India (P) Ltd. (380 ITR 423). Respectfully following the said decisions we uphold the order of the learned CIT(A) and reject the grounds raised by the Revenue.

9. The issue in appeal for A.Y. 2011-12 being identical the decision rendered by us for A.Y. 2009-10 would apply mutatis mutandis to the appeal for A.Y.2011-12.

10. In the result, the appeal filed by the Revenue are dismissed."

We do not find any reason to deviate from the well reasoned aforesaid decision of the tribunal in the assessee's own case in ITA no. 5403 & 5402/Mum.2016 vide common orders dated 23.02.2018 for A.Y. 2009-10 and A.Y. 2011-12 . Thus, Respectfully following the aforesaid decision of the tribunal in assessee's own case, we allow ground number 4 raised by the assessee in its appeal for AY. 2012-13, subject to limited verification by the AO as to correctness of the amounts so claimed in two successive years. On the same analogy, the claim of additional depreciation u/s 32(1)(iia) of the 1961 Act

which stood disallowed in AY 2011-12 on the ground of user of new plant and machinery for a period of less than 180 days keeping in view second proviso to Section 32(1) of the 1961 Act , shall be allowed in the impugned assessment year subject to limited verification by the AO as to correctness of the amounts so claimed in two successive years.. The appeal of the assessee is partly allowed as indicated above. We order accordingly.

6. In the result, appeal of the assessee in ITA No. 7370/Mum/2016 for AY 2012-13 is partly allowed.

Order pronounced in the open court on 22.04.2019

Sd/-	Sd/-
(Pawan Singh)	(Ramit Kochar)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 22.04.2019
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**