

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.118/Coch/2019 : Asst.Year 2014-2015

M/s.Abad Fisheries Pvt. Ltd. C/o.Kaimal & Co., CAs 8/1365, T D East Road Mattancherry Cochin – 682 002. PAN : AAFCA6821M.	Vs.	The Asst.Commissioner of Income-tax, Corp Cir.1(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.P.K.Sasidharan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 02.05.2018	Date of Pronouncement : 06.05.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax's order dated 10.01.2019 passed u/s 263 of the I.T.Act. The relevant assessment year is 2014-2015.

2. In this case, the assessee is questioning legality of the order passed u/s 263 of the I.T.Act, wherein the CIT set aside the assessment order dated 15.12.2016 completed u/s 143(3) of the I.T.Act. The CIT had set aside the assessment for the reason that assessee's claim of additional depreciation on plant and machinery installed during the previous year

amounting to Rs.18,14,757 was granted without proper examination by the Assessing Officer.

3. We have heard the rival submissions and perused the material on record. On identical facts in assessee's own case for assessment year 2013-2014, we have confirmed the order passed u/s 263 of the I.T.Act. However, we direct the Assessing Officer to independently examine whether there is a manufacture or production of new article of thing in the facts of the case. The relevant finding of the co-ordinate Bench of the Tribunal in assessee's own case for the immediately preceding assessment year 2013-2014 reads as follows:-

"6. We have heard the rival submissions and perused the material on record. On perusal of the assessment order dated 16.02.2016, which was subject matter of revision u/s 263 of the I.T.Act, we find that the claim of additional depreciation u/s 32(1)(iia) of the I.T.Act was granted to the assessee without any deliberation. The learned AR has not placed any evidence / material on record to show that the additional depreciation claimed was subject matter of examination by the A.O. during the course of assessment proceedings and thereafter deduction was granted. Since deduction u/s 32(1)(iia) of the I.T.Act was granted without any deliberation by the Assessing Officer, we are of the view that the assessment order dated 16.02.2016 is erroneous and prejudicial to the interest of the revenue. Therefore, the CIT had correctly invoked his revisionary power u/s 263 of the I.T.Act.

6.1 However, the apprehension of the assessee is that though in paragraph 6 of the impugned order of the CIT had set aside the assessment for de novo examination, in paragraph 5 of the order of the CIT, various observations are made which make it obligatory on the part of the Assessing Officer to disallow the claim of additional depreciation. The learned AR had submitted before us that the assessee has undertaken various processes which is technically superior to

the conventional method of preservation of seafood for the purpose of export. It was stated that the said processes tantamount to manufacture or production. Therefore, the assessee was entitled to deduction u/s 32(1)(ia) of the I.T.Act. Further, the learned Counsel submitted that the processes undertaken in the case of Cochin Frozen Food Exports Pvt. Ltd. (supra) relied on by the CIT is totally different from the processes undertaken by the assessee in the instant case. Therefore, it was contended that the CIT has erred in drawing comparison of the case considered by the Tribunal in Cochin Frozen Food Exports Pvt. Ltd. (supra) and the assessee's case. We are not aware of the fate of the order of Cochin Bench of the Tribunal in the case of Cochin Frozen Food Exports Pvt. Ltd. (supra). We are also not aware of the processes undertaken in that case whether it is identical / similar to the processes undertaken by the assessee in the instant case. The Assessing Officer shall compare the processes undertaken by the assessee in the instant case and that of the assessee in Cochin Frozen Food Exports Pvt. Ltd. (supra). In other words, the Assessing Officer shall independently come to a conclusion whether there is a manufacture or production of a new article or thing in the facts of the instant case, irrespective of the observation made by the CIT. With these observations, we dispose off the matter. It is ordered accordingly."

4. In the instant case also, there has been no proper examination by the Assessing Officer while granting deduction of additional depreciation u/s 32(1)(ia) of the I.T.Act. Therefore, we are of the view that the deduction granted u/s 32(1)(ia) of the I.T.Act without any deliberation by the Assessing Officer has resulted in the assessment order passed on 15.12.2016 as erroneous and prejudicial to the interest of the revenue and the CIT has correctly invoked his revisionary power u/s 263 of the I.T.Act. However, we direct the Assessing Officer to follow the Tribunal's direction in assessee's own case for assessment year 2013-2014 (supra). It is ordered accordingly.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 06th day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 06th May, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT-1, Kochi.
4. The CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin