

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.260/Kol/2017
Assessment Year :2013-14

DCIT, Circle-10(1), P-7,Chowringhee Square, 3 rd Floor, Kolkata-69	V/s.	Albert David List 15, Chittaranjan Avenue, Kolkata-700072 [PAN No.AACCA 3933 D]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rabin Choudhury, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Rajeeva Kumar, AR
सुनवाई की तारीख/Date of Hearing	30-04-2019
घोषणा की तारीख/Date of Pronouncement	15-05-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-4, Kolkata's order dated 06.12.2016 passed in case No.1338/CIT(A)-4/Circle-10(1)/Kol/15-16, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue raises following substantive grounds in the instant appeal:-

"1. Whether the Ld. CIT(A) was correct in allowing 30% depreciation as claimed by the assessee despite the fact that the claim of the assessee that it was manufacturing IV Fluid Bottles and Disposable Syringe and needles with the help of Plastics Moulds identical with the Moulds used in Rubber & Plastics Goods Factories was not blocked by any materials or cogent explanation?

2. Whether the Learned. CIT(A) was correct in holding that technically similar Moulds used in Rubber & Plastics Goods Factories were also

used by the assessee company in manufacturing I.V. Fluid Bottles and Disposable Syringe and needles?

3. Was the Ld. CIT(A) not incorrect in relying upon the decision of the Karnataka High Court in AMCO Batteries case in which the Hon'ble Court referred to dies and moulds used in manufacturing plastics covers for batteries or for manufacturing washing machine, vacuum cleaner, etc.?"

3. It transpires during the course of hearing that the very issue of depreciation *qua* the very kind of assets had arisen in preceding assessment year 2012-13. The CIT(A) has admittedly followed his earlier lower appellate findings in the instant case. It transpires that the Revenue had preferred ITA No.1305/Kol/201 before this tribunal to the co-ordinate bench's order dated 12.01.2018 has restored back the same to Assessing Officer as follows:-

"2. The assessee in the present case is a company which is engaged in the business of manufacturing and trading of pharmaceutical products. The return of income for the year under consideration was originally filed by it on 29.09.2012 declaring a total income of Rs. 11,54,94,310/-. Thereafter a revised return was filed by the assessee on 26.03.2013 declaring a total income of Rs. 11,86,54,770/-. In the assessment completed under section 143(3) vide an order dated 23.02.2015, the total income of the assessee was determined by the AO. at Rs. 12,71,94,860/- after making certain additions. Thereafter a survey under section 133A was carried out in the case of the assessee on 16.07.2015. On the basis of the adverse findings of the survey, the assessee company agreed to offer additional income of Rs.1,43,62,640/- for the year under consideration by way of withdrawing some expenses which were not allowable as business expenditure under section 37(1). The assessment, therefore, was reopened by the AO. and in response to the notice issued by him under section 148 on 24.08.2015, the return of income was filed by the assessee declaring additional income of Rs. 1,43,62,640/-. During the course of the re-assessment proceedings, it was noticed by the AO. that the assessee has claimed depreciation of Rs. 1,70,68,691/- at higher rate of 300/0 on moulds. Since depreciation at higher rate of 30% was allowable on the moulds which are used in rubber and plastic goods factories, the assessee company was called upon by the AO to offer its explanation in the matter. In reply, it was submitted on behalf of the assessee company that the moulds were used for manufacturing plastic goods only i.e. I.V. Fluids in plastic bottle and Disposable Syringe and needles. This explanation of the assessee was not accepted by the AO. in the absence of any documentary evidence produced by the assessee to support and substantiate the same. He accordingly restricted the claim of the assessee for depreciation on moulds at 15% which resulted in disallowance of Rs. 85,34,346/-.

3. The disallowance of Rs.85,34,346/- made by the AO on account of its claim for depreciation on moulds was challenged by the assessee in the appeal filed before the Ld. CIT(A) and after considering the submissions made by the assessee, the Ld. CIT(A) deleted the disallowance made by the A.D. for the following reasons given in paragraph no 3.2 of his impugned order:

"I have considered the submission of the AR of the appellant in the backdrop of the assessment order. I have also considered the various citations as

referred to by the AR in the matter. On a careful perusal of the assessment order at para 2.2. I find that the AO has stringently applied the rate of depreciation applicable to the block of assets pertaining to Plant & Machinery @ 15% in respect of the moulds used by the appellant in manufacturing plastic products as contended without any countervailing finding whatsoever with cogent material and discussion. I further find that the AO has also commented that 30% of depreciation was admissible to Moulds which were used in rubber and plastic goods factories and that there was no dispute regarding the use of moulds by the appellant in manufacturing plastic products as discussed supra. In view of this and as delivered by the various forums, once moulds are used for manufacture of rubber and plastic goods, the appellant would be eligible for deduction at higher rate of depreciation u/s 32 of the Act. A mere cavalier disallowance made by the A.O. in the matter will not hold good unless the A.O. has brought on record any of the attendant materials to prove that the appellant was not entitled to the depreciation as claimed on account of moulds used for the manufacture of plastic products as envisaged in the relevant, statutes and rules. The relevant judicial citations would vindicate the stand of the appellant as follows:

- BPL refrigerator Ltd. vs ACIT (2004) 8S TTJ 0066, ITAT (Bangalore Bench)
- Kinetic Honda Motor Ltd. vs JCIT (2001) 72 TTJ 72 (Pune ITAT)
- CIT vs Amco Batteries Ltd. (1993) 203 ITR 0614 (Karnataka HC)
- BPL Sanyo Utilities & Appliances vs ACIT (ITAT Nos. 88 & 89/Bang/1998)

In view of the foregoing and also with special reference to the judicial precedence on the apposite matter as depicted above, I find that the appellant is ultimately eligible to claim depreciation on moulds for the manufacture of plastic products supra at the specified rate of 30%. Consequently, the AO is therefore directed to allow the claim of impugned depreciation on moulds @ 30 and not @ 15%. This ground is **allowed**"

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the learned DR, the onus to support and substantiate its claim for depreciation at a higher rate on moulds by filing the relevant documentary evidence was on the assessee and the same was not satisfactorily discharged by the assessee during the course of assessment proceedings before the AO in spite of sufficient opportunity afforded in this regard. As further contended by him, this vital aspect was completely overlooked by the Ld. CIT(A) and the disallowance made by the AO was deleted by him by observing that there was no dispute regarding use of moulds by the assessee company in manufacturing plastic products. He was also wrong in putting the onus on the AO. by observing that the AO should have brought some attendant material on record to prove that the assessee company was not entitled to claim higher depreciation on moulds. Even the learned counsel for the assessee has not been able to dispute this position clearly evident from the impugned order of the Ld. CIT(A). He has only contended that the assessee company has sufficient documentary evidence to support and substantiate its claim that the moulds were used for manufacturing of plastic goods and urge that one more opportunity may be given to the assessee to substantiate its case by producing the said evidence for the verification of the Assessing Officer. Since the learned DR has not raised any objection in this regard, we set aside the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and restore the matter to the file of the AO. with the direction to decide this issue afresh after giving one more opportunity to the assessee to produce the relevant documentary evidence in support of its claim for higher depreciation on moulds.

5. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.”

The assessee fails to pin-point any distinction in the facts involved in these two assessment year(s). We therefore adopt judicial consistency to restore the instant **lis** back to the Assessing Officer for his simultaneous consequential adjudication.

4. This Revenue's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court 15/05/2019

Sd/-
(लेखा सदस्य)
(Dr.A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 15/05/2019 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-CIT, Cir-10(1), P-7, Chowringhee Sq. 3rd Fl, Kolkakta-69
2. प्रत्यर्थी/Respondent-Albert David Ltd., 15, Chittaranjan Avenue, Kolkata-72
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।