

**In the Income-Tax Appellate Tribunal,
(Delhi Bench 'G', New Delhi)**

**Before : Shri H.S. Sidhu, Judicial Member
Dr. B.R.R. Kumar, Accountant Member**

**ITA No. 1771/Del/2015
Assessment Year: 2007-08**

ACIT, Circle 22(1), New Delhi. (Appellant)	vs.	Sandhu Contractors Pvt. Ltd., C-153A, Moti Nagar, New Delhi PAN- AAACS2782A (Respondent)
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Appellant by	Sh. N.K. Bansal, Sr. DR
Respondent by	Sh. A.N. Khurana, CA

Date of Hearing	12 .06.2019
Date of Pronouncement	12.06.2019

ORDER

Per B.R.R. Kumar, A.M.:

The case was reopened u/s147 of the Income Tax Act 1961, based on the audit objection that the assessee has claimed excess depreciation. The operative part of the assessment order is reproduced below :

“During the year under consideration, the assessee company is engaged in the business of construction of industrial & residential buildings, Hydel Power Project, Institutional & commercial projects on contractual basis for various private & Gov. client as in the past.

During the course of assessment proceedings the Ld. AR was asked to explain as why the amount of Rs. 2000040/- being excess claim in the P&L account on account of depreciation be not withdrawn and added back to the total taxable income of the assessee. In absence of any documentary support the same is being disallowed and added back to the total income of the assessee.”

2. From the perusal of assessment order, it can be seen that the Assessing Officer has failed to give any reason as to how the depreciation claimed by the assessee was wrong or given any re computation of the depreciation. The Id. CIT(A) deleted the addition on the grounds that the Assessing Officer has not applied his mind and the depreciation worked out by the assessee was correct. The relevant part of the order of the CIT(A) is as under :

(ii). Regarding the addition on account of depreciation, I find that the A.O. has not discussed what was the reason for treating the amount of Rs.20,00,040/- as excess depreciation. It appears that A.O. has not calculated the rate of depreciation and also not considered the sub-section (iia) of section 32(1) by which additional depreciation @20% was allowed with certain restrictions. Without appreciating full facts of the issue, Ld. Assessing Officer mechanically accepted the view of the audit party and added Rs.20,00,040/- without applying his mind. The additional depreciation claimed by the appellant was as under:

<i>(i)</i>	<i>Plant & machinery</i>	<i>Rs.9,84,671/-</i>
<i>(ii)</i>	<i>Shuttering Material</i>	<i>Rs.3,13,504/-</i>
<i>(iii)</i>	<i>Office Equipment</i>	<i>Rs. 2,360/-</i>
<i>(iv)</i>	<i>Tippers/Trolley</i>	<i>Rs.6,99,506/-</i>

After considering these details, I find that the nature of the business of the appellant is construction and it is a regular contractor, hence the plant & machinery, shuttering material and trippers / trolley are coming under the head "Plant & Machinery" and additional depreciation is allowable. However, appellant has wrongly claimed additional depreciation on office equipment amounting to Rs.2,360/-. In view of this, I find that only disallowance required by the assessing officer was Rs.2,360/"

3. We have perused the record and heard the arguments of both the parties. The depreciation claimed by the assessee on the block of assets is as under:

Block 15%	-Block 60%	- Block 5%	-Furniture & Fittings 10%	- Total Depreciation
57,29,913	1,22,369	416	20,204	58,72,902

It was argued that the amount of Depreciation claimed as per Computation of Income under Schedule BP at page 12 point No.12(i) of the Return of Income is Rs.58,72,902. The Id.CIT(A) after going through the details held that depreciation has been correctly calculated and disclosed at page No. 14 & 16

of the return of income filed as per the Income Tax Act and additions due to excess depreciation claimed is not valid and deserved to be deleted.

4. Having gone through the business affairs of the assessee and the depreciation schedule as per the Income-tax Rules and the claim of the assessee pertaining to depreciation, we hereby decline to interfere in the order of the Id. CIT(A).

5. Ground No. 2 pertains to encashment of bank guarantees which has been claimed by the assessee as Revenue expenditure. The bank guarantees is encashed in the normal course of business, which amounts to trading receipts assessable to Income Tax in the hands of the recipient and be treated as revenue expenditure. This can, in no way, be treated as disallowable expenditure. The Id. CIT(A) has relied on the judgment of Hon'ble Delhi High Court in the case of STC India Ltd., 94 ITR 496. Having gone through the facts, since the encashment of bank guarantees constitutes revenue expenditure, we hereby decline to interfere in the order of the Id. CIT(A). Since the matter has been dealt on merits of the case, adjudication on the issue of reopening would become academic in nature and hence, not dealt with.

6. As a result, the appeal is dismissed.

Order pronounced in the open court.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(B.R.R. Kumar)
Accountant Member

Dated: 12.06.2019

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi