

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6107/Mum/2017

(निर्धारण वर्ष / Assessment Year : (2014-15)

M/s. Gold Seal Engineering Products P . Ltd ., Gr. Floor, Gold Seal House , Village Road, Bhandup (W), Mumbai-40 0078	बनाम/ v.	ACIT 15(1)(2), Mumbai
स्थायी लेखा सं./PAN: AAACG1492R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri. C. V. Dharkar	
Revenue by:	Shri. B.Staynaryana Raju (DR)	

सुनवाई की तारीख /**Date of Hearing** : 18.06.2019

घोषणा की तारीख /**Date of Pronouncement** : 18 .06.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 6107/Mum/2017, is directed against appellate order dated 14.06.2017 in appeal no. CIT(A)-24/ACIT-15(1)(2)/IT-326/2016-17, passed by learned Commissioner of Income Tax(Appeals)-24, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2014-15, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 23.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2014-15.

2. The grounds of appeal raised by assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in sustaining depreciation disallowance of Rs. 14,38,746/- . The learned CIT(A) ignored the documentary evidences and the upholding of the disallowance is thus imaginary and subjective in nature and thus needs to be deleted.

2. On the facts and in the circumstances of the case and in law the learned CIT(A) was duty bound to adjudicate the appeal instead of merely relying of the earlier Order. The upholding of the disallowance without dealing the submissions is arbitrary and needs to be deleted.

3. On the facts and in the circumstances of the case and in law the learned CIT(A) was duty bound to apply the provisions of section 38 to the depreciation claimed. The upholding of the disallowance of the depreciation claim is thus illegal and contrary to the provisions of law.

4.All the above grounds are independent and without prejudice to each other.

5. The appellant craves leave to add, amend, alter, substitute modify any or all grounds of appeal at the time of hearing.”

3.The brief facts of the case are that the assessee is manufacturer of auto ancillary parts. The issue in dispute is repetitive and concerns itself with disallowance of depreciation on the property. The assessee had two factories one at Bhandup and another at Daman. The assessee had received rental income with respect to portion of the property at Bhandup and the assessee claimed deduction u/s 24(a) towards statutory deduction of 30% towards repairs and maintenance which was set off against income from house property. The authorities below were of the view that simultaneously allowing depreciation and statutory deduction u/s 24(b) is not possible. The assessee has portion of the property let out at Bhandup. The factum of proportion of the property let out and the portion of the property which was used for its business is a question of fact which requires investigation of facts and since similar issue arose in AY 2012-13 , the tribunal was pleased to restore the matter back to the AO to identify let out portion in proportion to total constructed area in AY 2012-13 in ITA no. 6259/Mum/2016 vide orders dated 09.05.2018 to compute

disallowance of depreciation u/s 32 of the 1961 Act, wherein the tribunal was pleased to hold as under:

“7. We have considered rival contentions and perused the material on record . We have observed that the assessee is engaged in the business of manufacturing of Auto Ancillary parts. The assessee has two factories one located at Bhandup and second at Daman. We have observed from the audited accounts filed in paper book with the tribunal that assessee has reflected two set of building at Bhandup factory (paper book page 18) wherein there are two sets of building one classified as existing building and second is classified as new building and their values are specified separately in the audited financial statements. The assessee also filed leave & licence agreement dated 07.10.2010 wherein the assessee is stated to have given on lease 701 Sq meters of constructed area on leave & licence basis, out of the following area of which the assessee is stated to be in possession and occupation in the said leave and license agreement, as under:-

“1. Gold Seal Engg. Products Pvt. Ltd. Is in possession and occupation of title land bearing CST No. 387, admeasuring about 3745 Sq.Mts. and Survey No. 75, Hissa No. 3/8 of Bhandup Division and bearing city Survey No. 389, admeasuring 1254 Sq. Mtrs. Out of Survey No. 75 Hissa No.1, situated at Agra Road, Bhandup, Mumbai 400 078(Annex1) as a Licensee vide a leave and license agreement dated 5.9.97.

It was out of this aforesaid area , the assessee has given on leave & licence basis 701 Sq mtrs to Gold Seal Engg Products Limited out of the above area. The assessee has claimed to have filed building plans before learned CIT(A) as an additional evidences which are placed in paper book 57 to 59. These building plans were filed for the first time before learned CIT(A) . The learned CIT(A) on the other hand has given contrary finding that no evidences were filed before him and only bald statements were made. The claim of the assessee is that the said area of 701Sq Mtrs which is let-out is out of the area of 2528.05 Sq. Meters situated in the existing building. The assessee claim is that the balance area of existing building and also the entire new building situated at Bhandup is in its possession of the assessee which is used for its business purposes. Thus it is claimed by the assessee that only the proportionate disallowance of depreciation of building consisting of existing structure to the tune of 27.455% which was let-out can be disallowed as that proportion of income from letting out of the said area is offered for taxation under the head ‘income of house property’ and there is no provision in the 1961 Act to claim depreciation on the said income from house property but the rest of depreciation on existing building and the entire depreciation on new building is to be allowed to the assessee as the same were used for its business. However deduction on account of repair and maintenance to the tune of 30% u/s. 24(a) is already claimed by the assessee so far as rental income is concerned. We agree with this proposition of the assessee that the depreciation be disallowed to the tune of 27.455% of depreciation claimed on the existing structure as the said area is claimed to have been given on rent, but both the authorities below have given concurrent finding of fact that evidences are not placed before them and in any case building

plans were placed before the learned CIT(A) as an additional evidence for the first time . The learned CIT(A) did not call for the remand report from the AO w.r.t. these additional evidences which is in violation of Rule 46A of the Income Tax Rule 1962. We have also carefully gone through the entire spectrum of evidences placed in paper book before the tribunal and we also could not correlate the identification of property let out with identification of property called by the assessee as an existing structure out of which this area of 701 square meter was claimed to be carved out and let-out. These are findings of fact which require proper co-relation and merely filing of documents are not sufficient. Thus, we are principally in agreement with the assessee's proposition that the depreciation in proportion of let out constructed area to the total constructed area of the building called as an existing building is to be disallowed but we are remitting the matter back to the file of the AO for limited purposes of verification and correlation by identification of the property consisting of an area of 701 Sq mtrs of area being let-out by the assessee with the land identification of the building and total constructed area of the said building . This ground is allowed for statistical purposes as indicated above."

Thus, tribunal for AY 2012-13 allowed appeal of the assessee for statistical purposes and directing AO to verify as to let our portion to the total constructed area, to compute disallowance of depreciation . We have observed that the AO has disallowed depreciation for the impugned assessment year by following the order of learned CIT(A) for AY 2012-13. The learned CIT(A) for impugned assessment year has dismissed the appeal of the assessee by following the decision of learned CIT(A) for AY 2012-13. The appeal of the assessee for AY 2012-13 is now adjudicated by tribunal vide orders dated 09.05.2018 which are reproduced above , to which one of us being Accountant Member was part of the Division Bench which pronounced the aforesaid order. It is also brought on record by learned counsel for the assessee before the Bench that learned CIT(A) while adjudicating appeal for AY 2015-16 in assessee's own case in appeal no. CIT(A)-24/ACIT-15(1)(2)/IT-217/2017-18 vide orders dated 24.04.2019 has followed the aforesaid tribunal order dated 09.05.2018 for AY 2012-13 in assessee's own case and partly allowed the appeal of the assessee and directions were issued by learned CIT(A) mto AO to compute the disallowance of depreciation to the extent of 36.364% of the total area on which depreciation is claimed. It is explained that factual matrix has remained the same and the AO may be directed to verify the

factual matrix of the case as is prevalent in the year under consideration. The learned DR fairly agreed that the matter may be restored to the file of the AO for fresh adjudication by following the ratio of decision dated 09.05.2018 passed by tribunal in assessee's own case for AY 2012-13 by applying factual matrix of the case as is prevalent in the impugned assessment year. After hearing both the parties and by Respectfully following the ratio of decision of the Mumbai-tribunal in ITA no. 6259/Mum/2016 for AY 2012-13 vide orders dated 09.05.2018 in assessee's own case, we restore the matter to the file of the AO to apply prevailing factual matrix prevalent during the impugned assessment year to the ratio of decision of ITAT, Mumbai dated 09.05.2018 for AY 2012-13 in assessee's own case and accordingly compute disallowance of depreciation accordingly. We order accordingly

4. In the result, appeal filed by the assessee in ITA no. 6107/Mum/2017 for AY 2014-15 is allowed for statistical purposes.

Order pronounced in the open court on 18.06.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 18 .06.2019 को की गई

Sd/-

(SANDEEP GOSAIN)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 18.06.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent

3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI

1.	Draft dictated on	18.06.2019	Sr PS	Initial
2	Draft placed before Author on	18.06.2019	Sr PS	
3	Draft proposed & Place before the 2 nd member	.06.2019	JM/AM	
4	Draft discussed/approved by 2 nd Member		JM/AM	
5	Approved draft comes to the Sr PS		Sr.PS	
6	Kept for pronouncement on	.06.2019	Sr PS	
7	File sent to the Bench Clerk	.06.2019	Sr PS	
8	Date on which file goes to the Head Clerk			
9	Date on which file goes to the AR			
10	Date of dispatch		Sr PS	