

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND**

SMT BEENA PILLAI, JUDICIAL MEMBER

**ITA No.1749(Bang)/2019
(Assessment Year : 2016-17)**

M/s Bydesign India Pvt.Ltd.,
Velankanni Campus, Phse-I,
Bangalore -560 100
PAN No.AABCB5845J

Appellant

The Commissioner of Income tax(A)-1
Bangalore

Respondent

**Appellant by : Shri V. Srinivasan, Advocate
Revenue by : Dr Shankar Prasad, K, Addl.CIT**

Date of hearing : 12-09-2019

Date of pronouncement : 20-09-2019

ORDER

PER SMT BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 24/02/2019 passed by Ld.CIT(A)-1, Bengaluru for assessment year 2016-17 on following grounds of appeal:

1. *The Learned Appellate Authority erred by disallowing the expenses u/s 14A even though no expenditure was incurred by the appellant in relation to income not chargeable to tax.*

2. *The appellant states that "The Honorable jurisdictional Bench of income tax appellate Tribunal in the following cases of John Distilleries in ITA No 1565/Bang/2014, M/s Subramanya Constructions and Development Company Limited in ITI No 404/Bang/2013, has held that no disallowance under section 14A read with rule 8D shall be made when there is no exempted income in that particular year. Further, recently, The Honorable Bangalore Bench of ITAT in case of Ambuthirtha Power Private Limited in ITA 243/Bang/2016 vide order dated 7.7.2017 relying on the judgement of Honorable High Court of Delhi in the case of Cheminvest Limited (378 ITR 33 (Del) held that if there is no actual receipt of exempt income then no disallowance of expenses can be made under section 14A of the Act read with rule 8D of the Income-Tax rules. It is an Undisputed fact that during the current financial year relevant to the assessment year has not earned any exempt income. Respectfully the following jurisdictional income tax Appellate Tribunal's Decisions. I allow the appeal of the appellant on this ground".*

3. *The Learned Appellate Authority erred by disallowing Depreciation on Assets put to use by the appellant citing the reason that co-relatable depreciation on development of ICAS Project needs to be disallowed.*

The Learned Appellate Authority in not considering the fact that Income Tax Act allows the Depreciation on usage basis when the assets purchased are put to common use. The Appellant wants to rely on the following judicial decision in

support of his claim: a. Hindustan Engineering & Industries Ltd. Vs Deputy Commissioner of Income Tax Central Circle (1)(4) Kolkata - Whether assets of MSL after amalgamation became assets of assessee-company by operation of law and it fell into 'Block of assets' of assessee-company and, therefore, though such assets, were non-functional, yet they could not be segregated and depreciation had to be allowed in respect of same - Held, yes [Para 25]

b. Sony India (P.) Ltd Vs Commissioner of Income Tax Taxmann Delhi High Court 2017] 88 taxmann.com 580 (Delhi), Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of (User of asset) - Assessment year 2005-06 - Assessee would be entitled to depreciation in respect of assets which were part of block of assets even if said assets had not been put to use during relevant assessment year and had been sold prior to end of accounting year

S. The Learned Appellate Authority by not considering the fact that the Appellant has maintained separate books of account for its general activity and for ICAS Project and furnished the ledger extract of Grant Received Ledger, Interest Free loan received from Group Concerns and utilization statements to prove that in respect of ICAS Project there was no Interest spending and therefore the capitalization of interest does not arise at all.

6. The Learned Appellate Authority erred by not giving enough opportunity to the Appellant to present his case which is against the Equity and Principles of Natural Justice.

7. The assessee craves leave to add/alter any of the grounds of appeal before or at the time of hearing.

3. It has been submitted that assessee neither appeared nor filed any details/submissions before Ld.CIT(A) despite notices being issued.

3.1 Ld. CIT (A) therefore decided the issue based upon observations of Ld.AO.

4. Assessee is now submitting before us that an opportunity may be granted to represent its case before Ld.CIT(A).

4.1 Ld.Sr.DR objected to the same and submitted that despite sufficient opportunity, assessee has failed to appear before Ld.CIT (A) to defend the additions made by Ld.AO. It has been submitted that assessee do not deserves an opportunity of being heard for the second time under such circumstances.

5. We have perused submissions advanced by both sides in the light of the records placed before us.

5.1 Ld. AR admitted to the fact that assessee failed to appear before Ld. CIT(A) to represent its case. However, the right of being heard cannot be denied to assessee. We are therefore of considered opinion to set aside the issue back to Ld.CIT(A) subject to cost of Rs. 5000/-payable by assessee within 15 days of receipt of this order. Assessee is directed to pay the cost to Karnataka Chief Minister's Relief Fund. Upon filing the proof of cost having deposited in along with affidavit, the Ld.CIT(A) is directed to issue notice of hearing to assessee. Assessee shall then file all requisite details in support of its claim which shall be verified by Ld.CIT(A) in accordance with law and decide the issue contested herein afresh

on merits by passing the speaking order. With the aforesaid direction, we set aside appeal back to Ld.CIT(A).

Accordingly ground raised by assessee stands allowed for statistical purposes.

5. In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 20-09-2019.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Dated: 20-09-2019

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

By Order
Asst. Registrar