

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 3602/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

Chhatariya Firetech Industries 23-A, Suryodaya Mill Compound, 1 st Floor, 96, Tardev Road next to AC Market, Mumbai	बनाम/ Vs.	Jt. Commissioner of Income Tax Range-2, Bhavnagar
&		
Anil R. Shah (C.A.) Shreeji House, 4 th Floor, B/h. M. J. Library, Ellis Bridge, Ahmedabad - 380006		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFC8648J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Anil R. Shah with Kinjal Shah, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	24/09/2019
घोषणा की तारीख /Date of Pronouncement	04/10/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad (CIT(A)' in short), dated 30.09.2015 arising in the assessment order dated 25.03.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The ground of appeal raised by assessee reads as under:

“1) *The CIT(A) has erred both in Law and in fact in confirming addition of Rs.4,85,834/-alleging it to be excessive shortage. Your Appellant has been maintaining regular and proper books of accounts duly Audited and the shortage declared and claimed is fair and reasonable keeping in mind the method of accounting as well as past practice.*

During course of assessment providing and before CIT(A) we had given full data and explanation with regard to shortage and the addition by Assessing Officer being on presumption and guess work and only on one sole instances the entire addition of Rs.4,85,834/- deserves to be deleted.

2) *The CIT(A) has also erred in confirming addition of Rs.2,35,980/- added by the Assessing Officer as excessive shortage in Lab Testing. Your Appellant has been maintaining regular and proper books of accounts duly Audited and the shortage declared and claimed is fair and reasonable keeping in mind the method of accounting as well as past practice and therefore addition of Rs.2.35.980/- be deleted.*

3) *The CIT(A) has erred in confirming addition of Rs.75,000/- out of Research & Development Expenses Account incurred by the Appellant during course of business and for purpose of business.*

It is submitted that your Appellant having supported the claim by documents, bills, vouchers, receipt in support of payment of Rs.75,000/- disallowance be deleted.

4) *The CIT(A) has erred in confirming disallowance of claim of Depreciation of Rs. 6,04,563/- on purchase of New Weaving Looms and since the said looms having been "put to use" and*

duly installed your Appellant ought to have been allowed Depreciation as claimed.

- 5) *The CIT(A) has also erred in confirming addition of Rs.88,170/- being expenditure incurred on packing forwarding and transportation charges of Looms purchased and since expenditure being of a revenue nature the same ought to have been allowed as business expenditure.*

Without prejudice and in the alternative, CIT(A) ought to have allowed Depreciation to your Appellant as per Law.”

3. When the matter was called for hearing, the learned AR for the assessee submitted that his grievance is limited to disallowance of depreciation on new Looms amounting to Rs.6,04,563/- and disallowance of transport and labour charges of new Looms Rs.88,170/- as capitalized by Revenue only. The learned AR thus submitted that he does not seek to press the grounds concerning excessive shortage in production of gray hose Rs.4,85,834/-, excessive shortage in Lab Testing Rs.2,35,980/- and Research & Development expenses Rs.75,000/-. In view of the assertions made on behalf of the assessee Grounds Nos. 1, 2 & 3 are dismissed as not pressed.

4. We shall now advert to Ground No.4 which concerns claim of depreciation of Rs.6,04,563/- on purchase of new Weaving Looms. We have considered the rival submissions on the issue. It is claimed on behalf of the assessee that new Weaving Looms were installed and put to use before the end of the financial year as pointed out before the lower authorities. Consequently, it was claimed that Revenue authorities were not justified in denying the depreciation on the new Looms installed. We find that it is an admitted position that the assessee has purchased new Weaving Looms as per invoice dated 21.12.2009 from M/s. Annpurna Engineering Works. Packing, forwarding and transportation charges of Rs.88,170/- were also found to be incurred on these Looms. The assessee is claimed to have

received the Looms on 01.02.2010 as per its accounts. The Revenue has disputed the claim of the assessee for not having put the Looms into use on the date owing to absence of satisfactory evidence. In this regard, we notice that the claim was primarily denied as the assessee could not show purchase of any motor that is required for putting the Looms in motion. It is the case of the assessee that the new Looms were commenced with spare motors. On appreciation of facts in totality, we find the claim of the assessee towards depreciation of new Looms to be maintainable. It is not in dispute that new Looms were purchased during the financial year and were delivered in the premises of the assessee company. The facts and circumstances of the case shows that new Looms were ready for actual use even if it is momentarily presumed that actual productions were not carried out. On the conspectus of facts, where the asset was ready for use, depreciation ought to have been allowed. Be it as it may, the entire exercise is revenue neutral when seen holistically over years and therefore no adverse inference is required to be drawn. The action of the Revenue authorities is accordingly set aside and the claim of the depreciation of Rs.6,04,563/- is allowed.

5. As regards claim of Rs.88,170/- towards transport and labour charges, it is submitted on behalf of the assessee that it has claimed the aforesaid expenses as revenue item whereas the Revenue has capitalized the same to the cost of the new Loom as same has been incurred for the purposes of transportation of new Looms to the factory premises. We do not find error in the action of the Revenue for capitalization of transport expenses. Having regard to the fact that transport and labour charges form part of the actual costs of new Looms, the assessee would thus be allowed benefit of depreciation on this count as well, as claimed in the alternative on behalf of the assessee. The AO is accordingly directed to allow depreciation

allowance on transport and labour charges component in accordance with law. The claim of the assessee is accordingly allowed in part.

6. In the result, the appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on 04/10/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 04/10/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।