

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, MUMBAI**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI RAMLAL NEGI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.6117/MUM/2018
निर्धारण वर्ष/Asstt. Year: 2011-2012

M/s Unicorn Synthetics Mills Pvt. Ltd., Block No.2A, Jai Hind Bldg No.1, Dr.A.M. Road, Bheleshwar, Mumbai-400002. PAN: AAACY0340A	Vs.	I.T.O, 4(3)(3), Mumbai.
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(Applicant)	(Respondent)
Assessee by :	Ms Ritika Agarwal, A.R.
Revenue by :	Shri Akhtar H. Ansari, Sr. D.R.

सुनवाई की तारीख/Date of Hearing : 05/11/2019
घोषणा की तारीख /Date of Pronouncement: 06/11/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-9, Mumbai dated 29/08/2018 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 25/02/2016 relevant to the Assessment Year 2011-2012.

The assessee has raised the following grounds of appeal:

The appellant company is aggrieved by the order dated 29/08/2018 passed u/s. 250 of the Act by the Commissioner of Income Tax (Appeals)-9, Mumbai (hereinafter referred to as "the CIT(A)") and is in appeal

- 1. BECAUSE, the CIT(A) has erred in law and on facts in upholding reopening of assessment as the requisite conditions of reopening have not been fulfilled.*
- 2. BECAUSE, the CIT(A) has erred in law and on facts by upholding the validity of reassessment order based on the third party information received by Respondent.*
- 3. BECAUSE, the CIT(A) has erred in law and on facts in holding that the plant and machinery has been purchased from grey market at a low cost although accepting the veracity of the voluminous material filed in support of the transaction, including bank certificate.*
- 4. BECAUSE, the CIT(A) has erred in law and on facts in upholding the validity of the reassessment order which is based solely on the information provided by the Investigation wing and without any independent enquiry by the Respondent.*
- 5. BECAUSE, the CIT(A) has erred in law and on facts by upholding the charging of interest u/s.234B and 234C of the Income Tax Act, 1961.*

The appellant craves leave to alter, add, amend, modify, delete or withdraw any of the grounds.

The assessee has raised the following additional ground without prejudice to the existing ground of appeal:

"3.1) BECAUSE, the CIT(A) has erred in law and on facts in upholding the disallowance of depreciation on Plant & Machinery to the extent of Rs. 4,37,905/- on the presumption that Plant & Machinery has been purchased from grey market at 50% price."

2. The interconnected issue raised by the assessee is that the ld. CIT-A erred in confirming the addition in part for Rs. 4,37,905.00 on account of depreciation.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading and processing of grey cloth. The AO during the assessment proceedings found that the assessee has purchased machines worth of Rs. 25,97,599.00 from the party namely M/s Siddhivinayak Steel which was declared by the Maharashtra sales tax department as Havala dealer. Accordingly, the AO during the assessment proceedings required the assessee produce the impugned party for establishing the genuineness of the transaction but the assessee failed to do so. However, the assessee in support of its contention filed the copy of purchase invoice, delivery challans, details of the payment, affidavit on oath, the ledger account etc.

4. However, the AO after considering the aforesaid documents concluded that the transaction for the purchase of machine is genuine but the depreciation claimed was disallowed on the ground that the assessee failed to produce the party. Accordingly the AO added the amount of depreciation amounting to ₹8,74,192 to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A) who has restricted the addition to the tune of Rs. 4,37,905.00 being 50% of the depreciation claimed by the assessee. Thus the learned CIT (A) allowed the appeal of the assessee in part.

6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 111 and submitted that once the transaction for the purchase of machinery has been accepted as genuine then there cannot be any disallowance of depreciation thereon. The learned AR for the assessee has also challenged the initiation of the proceedings under section 147 of the Act by submitting that there was no addition on the basis of reopening the assessment.

8. On the other hand, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee has shown purchase of the machinery worth of Rs. 25,97,599.00 from the party namely M/s Siddhivinayak Steel. Such party was declared as HAVALA party by the Maharashtra sales tax department. However, the AO treated the transaction for the purchase of machinery from such party as genuine but disallowed the depreciation claimed by the assessee on such machinery. Subsequently, the learned CIT (A) restricted the disallowance made by the AO to the tune of Rs. 4,37,905.00 being 50% of the amount of depreciation.

9.1 Now the issue before us arises for adjudication whether the depreciation on the purchase of machinery from the party, declared as Havala party by the Maharashtra sales tax department, can be disallowed in the given facts and circumstances. In our considered view, once the transaction for the purchase of machinery has been accepted by the authorities as genuine then

the question of disallowing the corresponding depreciation does not arise. It is because the depreciation is an allowance and the assessee is entitled for the same under the provisions of section 32 of the Act on the value of the fixed assets.

9.2 We also note that, the Revenue has already accepted 50% of the depreciation amount, meaning thereby, the same has been treated as genuine. The law is fairly settled that the depreciation has to be allowed as per the rate prescribed under the provisions of law. There cannot be part disallowance of the depreciation.

9.3 We also note that the assessee before the authorities below has furnished the necessary details of the party in the form of purchase invoice and delivery challan which are placed on pages 58 to 70 of the paper book and the authorities below has not pointed out any defect therein. To our mind, the assessee has discharged his onus by furnishing the details of the party and he cannot be penalized for not producing the party before the authorities below. As such, the authorities below were empowered under the provisions of the Act i.e. under section 133(6)/131 of the Act to take confirmation/enforce the attendance of such party but they failed to do so.

In view of the above, we are not in agreement with the orders of the authorities below. Accordingly, we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

9.4 As the assessee, succeeds on merit, we are not inclined to adjudicate

the other contention raised by the learned AR during the hearing.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 06/11/2019 at Mumbai.

**Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated: 06/11/2019

Manish, PS