

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. Nos: 1140, 1342 to 1344/AHD/2015
(Assessment Years: 2002-03 to 2005-06)**

Shree Rama Multi-Tech Ltd. 603, Shikhar Building, Navrangpura, Ahmedabad-380009 (Appellant)	V/S	Dy. CIT, Ahmedabad (Respondent)	Circle-8,
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PAN: AAJCS 1563N

**Appellant by : Shri S. N. Soparkar with Parin Shah
Respondent by : Shri O.P. Sharma, CIT/DR**

(आदेश)/ORDER

Date of hearing : 10 -10-2019

Date of Pronouncement : 25-11-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These four appeals have been filed by the Assessee against the order of the ld. CIT(A). Out of these four matters lead matter is ITA No. 1140/Ahd/2014

and in all four appeals issue is regarding disallowing of depreciation. And in ITA No. 1140/Ahd/2015, assessee has taken following grounds of appeal:

1 Ld. CIT (A) erred in law and on facts in confirming action of AO in disallowing depreciation of Rs. 9,27, 36,250/- on tangible assets in this set aside proceedings ignoring specific directions in order of Hon'ble IT AT. Ld. CIT (A) ought to have deleted disallowance made by AO appreciating submissions & documentary evidence placed on record.

2 Ld. CIT (A) erred in law and on facts in confirming disallowance made by AO without verification of purchase bills of assets or payment to suppliers for assets recorded in asset register corroborated by report of Dalai Mott Macdonald as directed by Hon'ble IT AT. Ld. CIT (A) ought not to have confirmed disallowance simply on the basis of survey report.

3 Ld. CIT (A) erred in law and on facts in not considering further valuation done from Shri Mukesh M Shah by holding it to be self serving document. Ld. CIT (A) ought to have taken cognizance of valuation corroborating existence of the assets. Ld. CIT (A) ought not to have relied on finding of the survey report that only assets installed in 2001 & 2002 be considered as real addition.

4.Ld. CIT (A) erred in law and on facts in confirming disallowance by AO without granting opportunity to the appellant to cross examination of the statements recorded during survey. Ld. CIT (A) ought to have directed AO to evaluate claim of depreciation as per directions of Hon'ble IT AT.

2. This is the second round before us. This matter came before the ITAT in ITA No. 298/Ahd/2006 for A.Y. 2002-03, ITA No. 338/Ahd/2006 for A.Y. 2002-03, ITA No. 4282/Ahd/2007 for A.Y. 2002-03 wherein revenue challenged the order of the ld. CIT(A) and Co-ordinate Bench set aside this matter back to the file of the A.O. with the following observation:

6. We have considered the rival submissions and material on record. The assessee claimed that due to financial crisis the details could not be produced at the time of survey which is not in dispute and is also supported by the fact that assessee filed the return of income declaring losses of Rs.19.95 Crores. The assessment year under appeal is 2002-03 and survey is conducted after several years on 15-03-2005. The asset valuation report of Dalai Mott MacDonald of May/2003 was found during the course of survey. Copy of the said report is filed on record which valuation report is prepared, on the basis of information, data and particulars provided by Industrial Development Bank of India and the assessee. The learned

Counsel for the assessee prepared a chart and referred to page numbers in the report of the valuer and by referring the details noted in the assessment order explained that all the assets not found by AO are specifically mentioned in the valuation report. Therefore, claim of the AO is incorrect that the assets are not mentioned in the valuation report which, was prepared about two years prior to the date of survey. The valuation shown by the valuer of assets was also stated to be more than the value claimed by the assessee. The assessee produced all the relevant details before AO regarding purchase of the assets but same has not been discussed in detail. The assessee also claimed that software was also purchased which was used for the purpose of business. The AO on the basis of report of Dalal Mott MacDonald also accepted the claim of the assessee in part and granted depreciation. Therefore, there was no reason for the AO to dispute the remaining part of such report which contained all the details of installation of the fixed assets in the premises of the assessee. Even, one of the persons examined during survey admitted that all the software were inbuilt. The learned CIT(A) on proper examination of evidences--and material rightly came to the conclusion that software is intangible asset and was loaded in the system of machine. The learned CIT(A) also rightly held that installation of software could be checked by the technical person whether it was loaded in the system or not. Therefore, the finding in the survey cannot be relied upon. Even the AO has accepted the fact that some of the software were developed locally and installed in the system. The finding of fact recorded by learned CIT(A) find support from the valuation report of assets prepared by Dalai Mott MacDonald which was found in survey -which .indicated that software were developed and installed by the assessee in the system. The assessee produced all the vouchers and receipt for the same which .was also examined by learned CIT(A). Nothing is produced before us during the course of arguments to rebut the findings of learned CIT(A). Considering the facts and circumstances of the case in the light of the material .on record, we do not find any justification to interfere with the order of the learned CIT(A) in allowing depreciation respect of all the software purchased and installed during the year. Further, the AO denied claim of the assessee because no fixed assets register was maintained by the assessee but same was produced before the AO subsequently. Some statements were recorded during the course of survey but it is not clear from the assessment order whether the same were supplied to the assessee for allowing their cross examination on behalf of the assessee. Unless, cross examination is allowed to such statements, the same cannot be used in evidence against the assessee. Merely because the parties who had supplied assets to the assessee have not responded to the notice of the AO may not be a ground for denying claim of the assessee on tangible assets. The learned CIT(A) also failed to consider that specific items of tangible assets are recorded in the report of Dalai Mott MacDonald, Since the material supplied by the assessee is not examined in detail and complete details of the assets are recorded in the report of valuation prepared prior to the survey at the instance of IDBI, therefore, we are of the view the 'matter as regards depreciation on

tangible assets requires reconsideration at the level of the AO. We accordingly, confirm the order of the learned CIT(A) in granting depreciation on intangible assets. The departmental appeal on ground No.1 is accordingly dismissed. However, the order of learned CIT(A) in refusing to grant depreciation on tangible assets is set aside and the matter is restored to the file of the AO for reconsideration. The AO shall pass reasoned order by giving reasonable sufficient opportunity to the assessee considering the valuation report of Dalai Mott MacDonald and the 'evidences produced by the assessee for purchase of tangible assets.

In the result, ground no. 2 & 3 of the appeal of the assessee are allowed for statistical purpose.

3. Briefly the facts of the case are that the AO disallowed depreciation amounting to Rs.1 2,82,1 7,500/- in respect of various assets made during the year which included integrated software purchased, SAESA 1005 IMP Machine, Component for PLT, Control Panels, Hot Foil Stamping Machine, Lab testing equipment, utilities for PLT, dyes and moulds for INDG etc. mainly pertaining to Unit-2, Unit-3 and Unit-4 for the year under consideration. The disallowance has been made on the following grounds. The details have been discussed by the AO in the assessment order. The software and machineries were purchased from .associated concern viz. Vimpon Precision Pvt. Ltd., Suraksha Petro Chemicals Pvt. Ltd., Modern Precision.) Industries and Sampat Rao. A survey was conducted at the office premises of the assessee on 15-03-2005 and during the survey no fixed assets registered was found to have been maintained at the office premises and various assets were not found physically at the factory premises. Later on, the assessee produced the fixed assets .register, where the additions to fixed assets were written in the register in different pen and with Sr. No. suffixed with "A". The asset valuation report prepared by Dalai Mott MacDonald was found during the survey which listed the assets of the assessee and its valuation as on 30-04-2003. The A. O. has found that all the assets are not mentioned therein. The statements were taken from various persons, who

said that majority of the software came with machines and only small changes are to be made in the software in consultation with the original suppliers and that where is the license or CD to use software, nobody could produce the same. The summons was issued to various suppliers, but no one attended. The AO has, therefore, held that the purchases of these assets are not genuine and disallowed the depreciation calculated at Rs. 12,82,17,500/-. It was submitted before the learned CIT(A) that all the assets purchased are genuine and the depreciation should be allowed. A copy of the appraisal report for valuation done by Dalai Mott MacDonald in respect of fixed assets was found during the survey. The value of the assets as on 31-03-2003 is more than the value of the assets as per the company's records. It shows that all the assets were purchased and the depreciation was rightly claimed. The assessee had purchased plant & machinery not only from the alleged associated concerns, but purchased machinery parts in large number from overseas market from world leader manufacturers as well. The total machinery purchased worth Rs.94,97,96,045/- was added during the year, which included integrated software purchased from Design Electronics & Soft Design. When the machineries were purchased, the company had two alternatives to purchase the software either to purchase inbuilt software along with the machine from original supplier located at Switzerland or to get it developed locally. By this process, the company could save large amount of customs duty and valuable foreign exchange of the country. The development of software from local market was for the immediate availability for after sales service. For the purpose of developing software to be fitted in the machineries imported from AISA Switzerland, Applitech Solution had deputed its engineers to AISA Company, so that they could get detailed knowledge, technical specifications, criticality of the machine and other hardware configuration requirements. Applitech Solution Ltd.. is a

CMM 5 company, having vast experience of developing software process software for Kandla Port Trust, GAD of Govt. of Gujarat, Home Deptt. of Gujarat, Ran Baxi Laboratories Ltd., Adani Willmar Ltd. and many other large size organizations. The assessee has submitted that the addition in plant and machinery also includes the items other than integrated software such as insulation for RCC tanks, treating equipments, air cool compressors, air cooled compact water chillers, dyes and moulds, which have been acquired from Vimpon Precision Pvt. Ltd., Modern Precision Industries and Suraksha Petrochemicals Pvt. Ltd. The assessee further submitted that software is an intangible asset and it is loaded in the system of the machineries and it cannot be physically found in the premises during the course of survey and any technical can only ascertain whether it is loaded in the system or not. Hence, the AO was not justified to say that no software found and seen at the factory premises. Further, in the valuation report found at the time of survey, which was prepared by Dalai Mott MacDonald, there is mention of automation for machinery and the existence of software and even the AO has accepted these facts and credit for part of the amount is to be given. When the AO was not accepting the existence of software and all the purchases of software were there to justify the claim, the same has to be accepted. Regarding the absence of other machineries during the survey, the assessee has submitted that during the long period from the date of installation to the date of survey, some of the items have either turned into scrap or used items and some of the items have already been fitted in as a part of the machinery. Further, it was not possible by the survey team to note down correctly all assts, as it was not physically possible to write down all the assets found during the survey at factory premises as there were large number of plant & machineries and hence, the report prepared at the time of survey was not proper and complete. The fact

that the assets are mentioned in the stock register in different hand writings and with numbers suffixed with "A" was only due to the reason that when it was found that the same were not entered earlier, it was entered later on. But this act did not make the purchase bogus. There were receipts of purchases, transportation payments, gate passes and store receipts etc. which were properly maintained. Therefore, it was submitted that the depreciation should be allowed, The learned CIT(A) considering facts and the explanation of the assessee partly allowed the claim of the assessee.

4. The pursuant to the direction of the ITAT order dated 06.01.2012. Id. A.O. called the assessee. Assessee furnished certain detail and reiterated the stand taken by the assessee.
5. Apart from that assessee has submitted all the purchase bills installations report and report of the surveyor and also submitted details of loan taken by the assessee from IDBI Bank in order to install machine and wrote three letters along with photographs of the machines to Id. A.O. to come and inspect machines etc. before disallowing the claim of the assessee for depreciation. But Id. A.O. did not physically inspected the machines upon which depreciation was claimed and Id. A.O. confirmed his earlier order.
6. Thereafter assessee preferred appeal before the Id. CIT(A) who just confirmed the order of the Id. Assessing Officer stating that Id. A.O. has rightly relied on the statement taken during the course of survey wherein survey team did not find any machine installed at the premises of the assessee.

7. The contention of the ld. D.R. Shri O.P. Sharma on behalf of the revenue contended that machines were purchased from the sister concerned and said sister concern had not enclosed before the three years ago when assessee purportedly to purchase the machines and heavily relied on the statement recorded during the survey conducted by the Income Tax Department Team on 15.03.2005. When specifically inquired from the ld. D.R. that on what basis he has stated that on the date of supply of the machines, company was not functioning. But ld. CIT(A)/DR could not substantiate his arguments with any documentary proof and he vehemently relied on assessment order. But being a final fact finding authority without any documentary evidence/proof on verbal submission addition cannot be made against in the hands of the assessee.

8. We have gone through the relevant record and impugned order. Now question before us is that whether on the basis of survey conducted by the Income Tax Department claim of the assessee for depreciation should be allowed or not. After detailed deliberations and both the parties we heard in detail in support of its contention, Ld. A.R. submitted all the details with regard to purchase of machines. On the other hand, revenue contention was that machines were not purchased on the given date and payment was made through journal entry. When we specifically asked about the payment made in order to purchase machinery. Ld. A.R. shown us the payment detail and they were made through banking channels and relevant details of the said payment were shown to us and list of suppliers with invoices of machinery purchased were also submitted before the lower authorities. And ledger account of M/s. Vimpsan Precision Pvt. Ltd. was also submitted before the lower authorities. Apart from that reconciliation chart of plant and machinery with Dalal Mott Macdonald report were also submitted to the effect that machines were very much there and

inspection was duly carried out by the surveyor. And Valuation Report certificate dated 26.05.2003 wherein before granting loan IDBI Bank carried out inspection and Valuation Report was duly prepared wherein details of all the machines were given.

9. The assessee requested Assessing Officer on 4th May, 2015 and on 12.08.2012 and on 19.09.2012 requesting the Assessing Officer to carry out the physical inspection of the machines. But ld. A.O. did not bother to inspect the same for the reason that ITAT did not give him direction to physically inspect the machines wherein in department appeal filed before the ITAT directed the ld. A.O. that he shall pass reasoned order by giving reasonable sufficient opportunity to the assessee considering the valuation report of Dalal Mott Macdonald and the evidences produced by the assessee for purchase of tangible assets. As we can see, ld. A.O. did not bother to carry out the physical inspection and valuation report of Dalal Mott Macdonald and did not consider evidences such as photograph of the plant and machinery submitted before the ld. A.O. in pursuant to the ITAT direction.
10. We draw support from the case of Hon'ble Supreme Court in the matter of CIT vs. S. Khader Khan Son (2013) 352 ITR 480 (SC) wherein Hon'ble Supreme Court has held that only on the basis of statement recorded during the survey proceeding u/s. 133A cannot be basis of addition. There has to be corroborative evidence in support of the contention of the ld. A.O.. In our considered opinion, assessee has complied with all the direction given by the ITAT and submitted all the proof/documentary evidence as per the direction of the Co-ordinate Bench and since it is a second chance before the ITAT and

we cannot make more miserable condition of the assessee in the hands of the revenue.

11. In the result, all four appeals with regard to depreciation of the assessee are allowed.

12. So far ground relating to levy of interest u/s. 234A/234B/234C & 234D of the Act and initiation of penalty u/s. 271(1)(c) are concerned, same are consequential and need not to be adjudicated at this juncture because we have already given relief to the assessee.

13. In the result, all the four appeals filed by the Assessee are allowed.

Order pronounced in Open Court on 25 - 11- 2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 25/11/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad