

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2355/Chny/2015

निर्धारण वर्ष /Assessment Year : 2012-13

M/s K.U. Sodalamuthu & Co.(P)
Ltd.,
428, Mettupalayam Road,
Coimbatore – 641 043.

v. The Income Tax Officer,
Corporate Ward – 2,
Coimbatore.

PAN : AAACK 7236 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 22.10.2019

घोषणा की तारीख/Date of Pronouncement : 29.11.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -1, Coimbatore, dated 28.10.2015 and pertains to assessment year 2012-13.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee claimed depreciation at the rate of 40% in the books of account as against the minimum rate of 15.33% prescribed under

Companies Act, 1956. According to the Ld. counsel, this Tribunal examined this issue in I.T.A. Nos.936 & 937/Mds/2015 dated 25.10.2016 and found that what was prescribed under the Companies Act, 1956 is only minimum depreciation. There was no bar under the Companies Act, 1956 to charge higher depreciation. Placing reliance on the Circular issued by Ministry of Industry in Circular No.2 of 1989 dated 07.03.1989, the Ld.counsel submitted that the circular clarified that the assessee is entitled to provide higher depreciation in the books on the basis of the technological risk perceived by the management. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer. On a query from the Bench when the assessee could claim higher rate of depreciation on the basis of technological report, whether any technological report was provided or furnished before the Assessing Officer? The Ld.counsel submitted that the technological report was available but it was not immediately available to produce before the Tribunal. Therefore, the Ld.counsel submitted that the matter may be remitted back to the file of the Assessing Officer for reconsideration.

3. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. According to the Ld. D.R., on the basis of technological report, the assessee may claim higher depreciation over and above 15.33%. However, in this case, according to the Ld. D.R.,

technological report was not filed and depreciation at the rate of 40% was claimed before the Assessing Officer on the basis of auditor's report, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the circular of Ministry of Industry, it is obvious that the assessee may claim higher depreciation over and above 15.33% prescribed under the Companies Act, 1956 on the basis of technological evolution report. In this case, even though the assessee claims that a technological evolution report was available, there is no evidence to suggest that it was filed either before the Assessing Officer or before the CIT(Appeals). It is also not filed before this Tribunal. Consideration of technological report is essential for allowing higher rate of depreciation. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter on the basis of technological evolution report which may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced in the court on 29th November, 2019 at Chennai.

sd/- (इंटूरी रामा राव) (Inturi Rama Rao) लेखा सदस्य/Accountant Member	sd/- (एन.आर.एस. गणेशन) (N.R.S. Ganesan) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,

दिनांक/Dated, the 29th November, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Coimbatore
4. Principal CIT- 1, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.