

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & Dr. A. L. SAINI, AM

आयकर अपीलसं/I.T.A No.843/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

AI Champdany Industries Ltd. C/o. Subash Agarwal & Associates, Siddha Gibson, 1, Gibson Lane, Suite- 213, 2 nd Floor, Kol-700069.	Vs.	PCIT-1, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCA4860D		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Vijay Shankar, CIT

सुनवाई की तारीख/ **Date of Hearing** : **24/02/2020**

घोषणा की तारीख/**Date of Pronouncement** : **28/02/2020**

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2013-14 arises against the Principal Commissioner of Income Tax - 1, Kolkata's order dated 21.03.2018 involving proceedings u/s 263 of the Income Tax Act, 1961 (in short 'the Act').

Heard Shri Subash Agarwal, learned authorized representing assessee and Shri Vijay Shankar, CIT-DR appearing at the Revenue's behest.

2. Relevant facts involved in the instant lis is in narrow compass. Both the learned representatives are *ad idem* during the course of hearing that this assessee a company manufacturing and trading in jute, jute blending, flax goods, had claimed to have been deriving house property income from various asset(s) for the past very many assessment years. They invited our attention to the Assessing

Officer's assessment order dated 26.03.2016 computing regular assessment in its case utterly not disallowing the corresponding depreciation claim despite the fact that the assessee had also sought to allow standard deduction @30% u/s 24 of the Act.

3. Next comes divergence of opinion between the parties. We are informed that the PCIT has chosen to exercise his section 263 revision jurisdiction by terming the impugned regular assessment as an erroneous one causing prejudice to interest of the Revenue for the precise reason that the Assessing Officer had accepted the assessee's house property income on the one hand and also allowed its depreciation claim on the other hand. Meaning thereby that once the assessee had claimed depreciation as per provisions of the Act and corresponding receipts qua the very fixed assets was sought to be assessed as house property income, the PCIT is of the view that the latter receipts ought to have been assessed under the head business income. He has therefore directed the Assessing Officer to frame afresh assessment on the same lines after quoting a catena of judicial precedents Malabar Industries Co. (2000) 243 ITR 83, Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84, Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323(SC), Gee Vee Enterprise vs. Addl. CIT [1975] 99 ITR 375, CIT vs. Shree Manjunathesware Packing Products & Camphor Works [1998] 231 ITR 53. This leaves the assessee aggrieved.

4. We have heard Shri Agarwal and Mr. Sankar reiterating both the parties' respective stands against and in support of the PCIT's assumption of revision jurisdiction. The assessee's case is that it had claimed the impugned depreciation relief by mistake only and therefore, the PCIT has erred in law and on facts in holding the regular assessment in question as erroneous causing prejudice to interest of the Revenue since the Assessing Officer had not assessed its receipts under the head business income. Mr. Agarwal fails to rebut the clinching fact that once the assessee has itself claimed to have been derived income from house

property by adopting consistency, its depreciation claim; apart from admissible heads u/s 24 of the Act is not allowable. The Assessing Officer appears to have neither examined the same during the course of assessment nor there is any justification coming from the assessee side. We hold in these facts and circumstances that PCIT's assumption of revision jurisdiction is very much justified in view of the foregoing factual position. The same is confirmed in principle.

5. Mr. Agarwal's next plea is that when the assessee itself admitted to have claimed the above-stated deprecation relief as a bona fide mistake, the corresponding receipts ought not to be assessed as business income keeping in mind the fact that it would lead to inconsistency of the settled proposition for the past very many assessment years. We observe that in this factual backdrop that it shall be very much open for the Assessing Officer to frame his consequential assessment as per law after taking note of the settled position regarding assessment of assessee's receipts from godowns etc. We also make it clear that the assessee may also exercise its rectification remedy qua bona fide mistake in depreciation claim in consequential proceedings. We order accordingly.

6. This assessee's appeal is disposed off in above terms.

Order is pronounced in the open court on 28.02.2020.

Sd/-
(A. L. Saini)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;
दिनांक/ Date: 28/02/2020
RS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. The Appellant - AI Champdany Industries Ltd.
2. The Respondent- PCIT-1, Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
[sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.