

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य एवं श्री अमरजित सिंह, न्यायिक सदस्य के समक्ष।

BEFORE SRI SHAMIM YAHYA, AM AND SRI AMARJIT SINGH, JM

आयकर अपील सं./ ITA No. 6205/Mum/2018

(निर्धारण वर्ष / Assessment Year 2004-05)

M/s Vipul Impex & Infra Build Ltd. 140K, Cavel Cross Lane No.7, Kalbadevi Road, Mumbai-400 002	बनाम/ Vs.	The Dy. Commissioner of Income, Range 4(2)(3) Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACJ1970D		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Akhtar Ali Ansari, DR

सुनवाई की तारीख / Date of hearing:	09.01.2020
घोषणा की तारीख / Date of pronouncement:	02.03.2020

आदेश / ORDER

**शमीम याहया, लेखा सदस्य/
PER SHAMIM YAHYA, AM:**

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.08.2018 and pertains to Assessment Year 20104-05.

2. The grounds of appeal read as under: -

"1) The Ld. CIT (A) erred in dismissing the Appeal No. 100761-18-19/AY 2004-05 against Assessment Order passed u/s



143(3) dated 25th March, 2015 by the Income Tax Officer 4 (2) (3), Mumbai.

2) On the statements of facts and circumstances of the case, the assessing officer is wrong in reopening of assessment for AY 2004-05 u/s 148 as issue of notice is bad in law and void.

3) On the statement of facts and circumstances of the case, the addition of Rs. 2,79,897/- made towards excess depreciation claimed u/s 32 is bad in law as PUF insulations are part of plant and machinery and does not change its basic character because of being wrongly classified under the head electrical installation and accordingly appellant is entitled to depreciation claim of 25%.

4) Assessee may be afforded an opportunity to produce the legal and factual position before confirming the additions."

3. This is the second round of appeal before the ITAT in this case. The issue in dispute is the chargeability of depreciation, whether the same should be at the rate of 25% as claimed by the assessee or 15% as allowed by the Assessing Officer on the ground that the items in dispute are electrical fittings. The



Assessing Officer examined the issue, according to the direction of the ITAT and has held that the depreciation is allowable at the rate of 15% being electrical fitting. Upon assessee's appeal, the learned CIT(A) has dealt with the issue in dispute elaborately and held as under: -

"4.2.2 During the appellate proceedings the appellant had placed various submissions and has taken the same stand which it had taken before the Assessing Officer. All the submissions of the appellant have been carefully considered. As seen this issue has been dealt at length in the order u/s.143(3) r.w.s 147 and also in the order passed by the Assessing Officer u/s.143(3) r.w.s 254 completed as per the directions of the Hon'ble ITAT. As seen from the order, AO has strictly adhered to the directions of the Hon'ble ITAT, adequate opportunity of being heard was provided, all the objections have been disposed of and finalized the order. All the submissions of the assessee were perused by the Assessing Officer and came to a conclusion that the appellant had not furnished any documentary evidence to substantiate which can prove that the electric installation was part of 'plant and

machinery' it is also a fact that the appellant itself had categorically classified the asset as 'electrical installation'.

4.2.3 On perusal of the facts of the case, it had travelled at length from CIT(A) and Hon'ble ITAT and again came for fresh adjudication. During this period and also subsequently appellant had enough time to establish its ground with proper documentary evidences. As seen from the record, neither it produced any worthwhile material nor substantiated with proper explanation. The assessing Officer had analyzed the earlier order of the AO, CIT(A) and also adhered strictly to the directions given by the Hon'ble ITAT. After flowing due procedure and accordingly the order u/s 143(3) read with section 254 was passed."

4. Against this order assessee is in appeal before the ITAT. We have heard the learned Departmental Representative. None appeared on behalf of the assessee despite notice being served.

5. Upon careful consideration, we find that authorities below have passed a reasonable and cogent order. The Assessing Officer has duly examined the issue and found that assessee has not been able to prove its claim of depreciation at the rate of 25%. The description of items in dispute duly corroborate the



findings of the Assessing Officer that the items are eligible for depreciation at the rate of 15% being electrical fitting. Accordingly, we do not find any infirmity in the orders of authorities below. Hence, we confirm the same.

6. In the result, appeal by the assessee stands dismissed.

Order pronounced in the open court on 02.03.2020.

Sd/-

(अमरजित सिंह / AMARJIT SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:02.03.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(शमीम याहया / SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai