

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI  
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2239/Chny/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

**M/s. Presidency Kid Leather P  
Ltd.,**  
No.21, Spartan Nagar, 1<sup>st</sup> Floor,  
Mogappair East,  
Chennai – 600 037.

Vs The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 5(2),  
Chennai.

**PAN: AAACP 1952D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri S. Ramakrishnan, CIT

सुनवाई की तारीख/Date of hearing : 19.02.2020

घोषणा की तारीख /Date of Pronouncement : 28.02.2020

**आदेश / O R D E R**

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

This appeal of the assessee is directed against the order passed by the Principal Commissioner of Income Tax–5, Chennai dated 31.03.2019 U/s.263 of the Income Tax Act, 1961 (in short 'the Act').

2. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that there was a delay of 65 days in filing the appeal before this Tribunal. The assessee has filed a petition for condonation of delay of 65 days. We have heard Shri S. Ramakrishnan, the Ld. Departmental Representative also. Having heard the Ld.Counsel for the assessee and the Ld.DR, this Tribunal finds that there was sufficient cause on the part of the assessee for not filing the appeal within the prescribed time. Therefore, the delay of 65 days in filling the appeal before this Tribunal is condoned and the appeal of the assessee is admitted.

3. Now coming to the merit of the appeal, Shri S.Sridhar, the Ld. Counsel for the assessee submitted that the assessee claimed depreciation on the written down value. For the assessment year 2013-14 also, the assessee claimed depreciation in respect of the very same intangible asset and the Assessing Officer allowed the claim of the assessee. In fact for the assessment year 2013-14, the assessee claimed the expenditure to the extent of Rs.9,06,55,000/- as revenue expenditure U/s.37 of the Act. The Assessing Officer after considering the material fact found that the expenditure of Rs.9,06,55,000/- was in the capital field. Therefore, he allowed depreciation at the rate of 25% to the extent of Rs.2,26,63,750/-. This

order for the assessment year 2013-14 attained finality. For the assessment year under consideration i.e., assessment year 2014-15, the Assessing Officer after referring to his earlier order for the assessment year 2013-14 found that the assessee is eligible for depreciation. In fact the expenditure was incurred towards export product development expenditure. According to the Ld.Counsel, the product developed by the assessee was exported to international market under the brand name "Pantherkid". The assessee was regularly participating in the international trade. The Assessing Officer classified the intangible asset under the head commercial right of similar nature. Therefore the Assessing Officer allowed depreciation U/s.32(1) of the Act. Hence the Commissioner is not correct in revising the order in exercise of his power U/s.263 of the Act. Moreover, the company was taken over by the bank under SARFEASI Act. Therefore, nothing remains in the hands of the assessee company. Hence the revisional order cannot stand.

4. On the contrary, Shri S. Ramakrishnan, the Ld. Departmental Representative submitted that for the assessment year 2013-14, the Assessing Officer allowed depreciation without due application of mind. The Ld.DR very fairly submitted that the properties of the

assessee company were sold under SARFEASI Act during the financial year 2013-14. However it is not known whether the Assessing Officer has conducted any enquiry. The failure of the Assessing Officer to conduct enquiry is an error within the meaning of Section 263 of the Act. Hence, the order of the Assessing Officer is not only erroneous but also prejudice to the interest of the Revenue.

5. We have considered the rival submissions on either side and perused the material available on record. It is not in dispute that the similar expenditure made by the assessee for export product development to the extent of Rs.9,06,55,000/- for the assessment year 2013-14 was claimed U/s.37 of the Act. The Assessing Officer himself disallowed the claim of the assessee U/s.37 of the Act and classified the same as capital expenditure and allowed depreciation at the rate of 25%. This order of the Assessing Officer for the assessment year 2013-14 attained finality. Now the Revenue claims that the Assessing Officer allowed depreciation without due application of mind for the assessment year 2013-14. If the Assessing Officer allowed depreciation for the assessment year 2013-14 without due application of mind, the Principal Commissioner of Income Tax ("PCIT") ought to have revised the order for the assessment year

2013-14. It may not be correct to say that the Assessing Officer has not applied his mind for the assessment year 2013-14 in the proceeding for the assessment year 2014-15. The fact remains is that on identical expenditure the Assessing Officer disallowed the claim of the assessee U/s.37 of the Act and treated the same as capital expenditure and allowed depreciation. This order of the Assessing Officer attained finality. For the assessment year 2014-15 which is under consideration, the Assessing Officer by following his own order allowed the claim of the assessee for depreciation at the rate of 25%. When the assessee incurred expenditure for creation of an intangible asset namely the brand name "Pantherkid", this Tribunal is of the considered opinion that such expenditure has to be treated as capital in nature. Therefore the assessee is entitled for depreciation U/s.32(1) of the Act. This is one of the possible views taken by the Assessing Officer. Hence, the PCIT is not justified in revising the order of the Assessing Officer in exercise of his power U/s.263 of the Act.

6. Now coming to the next ground of the appeal with regard to exemption claimed U/s.2(14) of the Act.

7. Shri S. Sridhar, the Ld.Counsel for the assessee submitted that out of 86.50 acres of land, the assessee has treated 20 acres of land as non-agriculture and balance 66.50 acres of land as agricultural land. The value of the agricultural land was Rs.55.28 crores, which was claimed U/s.2(14) of the Act as exempted. The Assessing Officer made a thorough enquiry and called for a report from the Inspector of Income Tax. After considering the electricity service connection for agricultural purpose from TamilNadu Electricity Board, and report of the Inspector of Income Tax, the Assessing Officer found that 66.50 acres of land is agricultural land. According to the Ld.Counsel, when the Assessing Officer made thorough enquiry through Inspector of Income Tax and taken into consideration of the electricity service connection for agriculture available on the land, the PCIT cannot say that there was no proper enquiry made by the Assessing Officer. Moreover the entire property of the company was taken over by the bank under SARFEASI Act. Therefore, it may not be correct at this stage to revise the order of assessment.

8. On the contrary, Shri S. Ramakrishnan, the Ld. Departmental Representative submitted that no doubt the Assessing Officer called for a report from the Inspector of Income Tax, however it is not known

whether the assessee has purchased the land with building or not. The PCIT also found that no accounts were maintained for agricultural activity. The assessee has not furnished any evidence for consumption of electricity for agriculture. Therefore, the PCIT found that the guideline laid down by the Apex Court for treating the land as agricultural land is not complied with. Hence, he revised the order.

9. Having heard the Ld.Counsel for the assessee and the Ld.DR, this Tribunal is of the considered opinion that the land in question has rightly been classified as agricultural land. It is not in dispute that out of 86.5 acres of land, 66.5 acres of land was claimed to be an agricultural land. It is also not in dispute that there was electricity service connection from TamilNadu Electricity Board. The Revenue now claims that there was no evidence for consumption of electricity. In the state of TamilNadu, the electricity for agriculture is supplied by the TamilNadu Electricity Board free of cost. Therefore when the electricity service connection was obtained, it may not be necessary for the assessee to establish that it consumed the electricity. In other words, to prove the consumption of electricity, when it was supplied free of cost is an impossible one. Moreover maintenance of accounts for agricultural purpose or activity cannot be expected when the

agricultural activities are not regulated in this country. In other words agricultural activity, agricultural markets are not properly regulated and it is an unregulated sector. Therefore, it may be difficult for maintaining accounts and other things for agricultural activity. Suffice to say that when the assessee establishes that land in question is agricultural land, electricity is obtained for agricultural purpose from TamilNadu Electricity Board, this Tribunal is of the considered opinion that there is no reason to doubt the nature of the land. Moreover under the SARFEASI Act, the property of the assessee was taken over by the bank and no useful purpose would be served in directing the Assessing Officer to re-examine the matter. Moreover, the Assessing Officer has made through enquiry through the Inspector of Income Tax. Therefore it is not a case of non-enquiry as observed by the PCIT. The Assessing Officer has made thorough enquiry and bring on record the entire material facts. The Assessing Officer has also taken into consideration the valuation report obtained by the Syndicate Bank. Therefore this Tribunal is of the considered opinion that the Assessing Officer has made a proper enquiry and has taken one of the possible views in the assessment order. Therefore, there is no justification in revising the order of the Assessing Officer by the PCIT. In view of the above discussion, we are unable to uphold the

impugned order of the PCIT. Accordingly the impugned order of the PCIT is set aside and the appeal of the assessee stands allowed.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the court on 28<sup>th</sup> February, 2020 at Chennai.

Sd/-

( एस जयरामन )

(S. Jayaraman)

लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> February, 2020.

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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