

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘A’

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 1636/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2013-14

DCIT, Cir.2(1)(1) Baroda.	Vs	M/s.Sun Petrochemicals P.Ltd. 402, R.K. Centre, 4 th Floor Fatehgunj Main Road Vadodara 390 002. PAN : AA ECS 0891 E
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आयकर अपील सं./ ITA No. 1635/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2013-14

DCIT, Cir.2(1)(1) Baroda.	Vs	M/s.Unimed Technologies Ltd Survey No.22 & 234 Baska Ujeti Halol Panchmahal, Gujarat 389 350 PAN : AA ACE 4022 B
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.N. Soparkar, AR
Revenue by :	Shri Virendra Ojha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 12/02/2020

घोषणा की तारीख /Date of Pronouncement : 11/05/2020

ORDER

PER RAJPAL YADAV, VICE-PRESIDENT: Present two appeals are directed at the instance of Revenue against separate orders of Id.CIT(A)-2, Vadodara dated 27.4.2018 passed in the Asstt.Year 2013-14 on respective appeal of the respondents.

2. Revenue has taken two grounds of appeal in each case. It contained five sub-grounds, hence, grounds of appeal in both the cases are not in consonance with Rule 8 of Income Tax (Appellate Tribunal) Rules; they are descriptive and argumentative in nature. In brief, its grievance in both the appeals relates to grant of depreciation on Solar Power Plant ("SPP" for short) by the Id.CIT(A). First of all, we notice that vital points in both the cases are common. Therefore, for the facility of reference, we take up the facts from Unimed Technologies Ltd. ("UTL" for short), as this appeal has been extensively argued by Id.representatives.

3. Brief facts of the case are that Unimed Technologies Ltd. has filed its return of income electronically on 18.9.2013 declaring total income at Rs.4,45,94,808/-. The case of the assessee was selected for scrutiny assessment, and notice under section 143(2) was issued on 2.9.2014. The assessee at the relevant time was engaged in manufacturing and dealing with pharmaceutical products and also development/sale of product technologies relating to pharmaceutical formulation. On scrutiny of the accounts, it revealed to the AO that the assessee-company has made an addition in the assets of Rs.10,65,00,000/- on account of Solar Power Plant on which depreciation at the rate of 80% and additional depreciation at the rate of 20% was claimed totaling to Rs.5,32,50,000/- under the head "Finance Lease Assets". The facts with regard to M/s.Sun Petrochemicals P.Ltd. are that the assessee has filed its return of income on 29.9.2013 declaring total income at Rs.3,51,52,094/- under the normal provision, and book profit under section 115JB of the Act at Rs.58,14,44,436/-. The case of this assessee was also selected for scrutiny assessment and notice under section 143(2) was issued on 4.9.2014. The

assessee at the relevant time was engaged in the business of manufacturing and trading of petrochemical products. This concern has also made addition of Rs.10,65,00,000/- on account of "SPP" on which depreciation at the rate of 80% and additional deprecation at the rate of 20% was claimed totaling to Rs.5,32,50,000/-. This depreciation of Rs.5,32,50,000/- was claimed at 50% because asset was not put to use for the complete years in both the cases. In this way, it is observed that facts on all vital points are common in both the cases. A perusal of the record would further show that M/s. Alpha Infrapop Pvt. Ltd. ("AIPL" for short) got a contract from MP Power Management Co. Ltd. ("MPPMCL" for short) and "MPPMCL" to install a "SPP" with a capacity of 20MW DC. A power purchase agreement was signed by "MPPMCL" and "AIPL" on 19.10.2012. M/s.Real Gold Developers LLP ("RGD" for short) had purchased the assets and made investment of Rs.120 crores. It was required to establish 16 blocks. These assets were later on given on lease to "AIPL". According these assesseees, they have purchased these assets and later on given them on lease. The break-up of solar block numbers, ownership of various parties along with their corresponding cost, has been submitted before the Id.CIT(A) in tabular form in the submissions filed by the assessee. For the facility of reference, we take note of such details, which reads as under:

<i>Owner</i>	<i>Block No.</i>	<i>No. of blocks</i>	<i>Total MW DC</i>	<i>Cost (Rs. in Crores)</i>
<i>Aditya Medisales Ltd</i>	<i>Block No. 14 & 17 Tables of Block 10</i>	<i>1.33</i>	<i>1.85</i>	<i>10.50</i>
<i>Sun Petrochemicals Pvt Ltd</i>	<i>Block No. 15 & 18 Tables of Block 10</i>	<i>1.33</i>	<i>1.87</i>	<i>10.65</i>

<i>Unimed Technologies Ltd.</i>	<i>Block No. 16, 18 Tables of Block 10</i>	<i>1.33</i>	<i>1.87</i>	<i>10.65</i>
<i>Sun Medications Private Limited (Now known as Sun Pharma Laboratories Ltd.)</i>	<i>Block No. 9, 11, 12, 13</i>	<i>4</i>	<i>5.81</i>	<i>33.10</i>
<i>Real Gold Developers LLP</i>	<i>Block No. 1 to 8</i>	<i>8</i>	<i>11.61</i>	<i>51.13</i>
<i>Total</i>		<i>16</i>	<i>23</i>	<i>116.03</i>

4. In order to satisfy himself that assesseees have acquired assets and put them for use of their business purpose, the Id.AO has called for various details, and issued a detailed questionnaire. Copy of such questionnaire is being reproduced on page no.4 to 6 of the assessment order. Thereafter, the Id.AO has analysed submissions made by the assessee. He thereafter made comparative study of the information called for vis-à-vis the kind of information submitted by the assessee. The Id.AO after going through such details rejected the claim of the assessee. The comparison made by the AO is worth to note. It reads as under:

"4.6. In response to the above show cause, the assessee company replied vide it's letter dated 16/03/2016 which is reproduced hereunder -

<i>Sr. No.</i>	<i>Explanation required by LAO</i>	<i>Explanation of the assessee</i>
<i>i)</i>	<i>As to how the investment was made by M/s Real Gold Developers LLP when the contract as well as Power Purchase Agreement was signed by MP Power Management Co. Ltd. with M/s Alfa Infraprop Pvt Ltd.</i>	<i>Real Gold purchased the assets and made investments. Alfa Infra took the assets on lease from Real Gold and others.</i>
<i>ii)</i>	<i>Evidence of receipt of each equipment with copy of purchase invoice,</i>	<i>Purchase bills for import along with proof of delivery upto M. P. are already submitted. As regards</i>

	<i>transportation evidence and delivery challans from premises of M/s Real Gold Developers LLP. Evidences in respect of handing over of these equipments to the site of M/s Alpha Infraprop Pvt. Ltd.</i>		<i>balance of items, confirmation from Real Gold is filed. This gives details of all items. It is also seen that M/s Alfa Infra has paid lease rent for March 2013. Moreover, we have also submitted the balance sheet for year ended on 31.03.2013 in the case of M/s A/fa Infra.</i>
<i>iii)</i>	<i>Justification of the acquisition cost of Rs. 10.65 Crores and of the transaction was undertaken at Arms Length Price.</i>		<i>Total cost was of Rs. 116.03 Crores. This cost is divided amongst each owner on the basis of capacity and contribution was accordingly decided.</i>
<i>iv)</i>	<i>Complete breakup of total cost of Solar Power Generating System amounting to Rs. 120 Crores as stated in your reply indicating the cost of each machinery separately with date of its receipt, phase wise erection cost to your plant as well as of entire plant.</i>	<i>:</i>	<i>Details a/ready submitted.</i>
<i>v)</i>	<i>As to how part of the Solar Power Plant could be owned, when it is not feasible to operate the plant in piecemeal and how it has been quantified that it would generate power of 1.87 MW.</i>		<i>Plants were divided between five owners. Based on capacity of assets owned by each owner, power supply was determined. It is various panels/ plates with distinct identification numbers on each of them.</i>
<i>vi)</i>	<i>Details of machinery with it's distinctive numbers, invoice number & date, cost. nos. etc.</i>		<i>This is already submitted giving table</i>
<i>vii)</i>	<i>That the said assets were handed over on 01.03.2013 and became operational on the same day and subsequently were also handed over to M/s Alpha Infra prop Pvt Ltd. on the same day.</i>		<i>Alfa has confirmed having received the plants. It is already informed that power generation was in September 2013. As far as this assesse is concerned, it has leased out total assets in March'13 itself in the course of its leasing business.</i>

viii)	<p>Invoice dated 01.03.2013, raised by M/s Real Gold Developers LLP, in which it is mentioned as "as per Annexure A attached". In this regard, you have contended in your submission that there is no such annexure.</p> <p>How there can be a sale transaction of any machinery/ item, that too involving such a huge sale consideration, without any description of equipment(s) and its specification with distinctive numbers, related documents of import and/or warranty</p>	<p>Details are already submitted. It is also explained that Real Gold spent the amount and we have reimbursed the amount coming to our share. Copy of account is also filed. Kindly refer our submission dated 01st March, 2016 sr. no. 9.</p> <p>Description is as per purchase invoice, with distinct identification numbers, import bill of lading, and transport copy etc have already been submitted earlier.</p>
ix)	<p>Submit the copy of invoices of the erection & installation of the Solar Power Plant by M/s Alpha Infra prop PvtLtd.</p>	<p>Cost of acquisition from Real Gold includes installation & erection, details of which have already been submitted.</p>
X)	<p>Justification of claim that the solar power plant was ready for generation of power as on 01.03.2013 in view of the fact that commercial generation of electricity was first started in the month of September 2013.</p>	<p>In the business of leasing, we handed over the plants on lease to M/s Alfa Infra. We received the lease rent also. Our claim is based on our nature of business.</p> <p>On 01.03.2013, it was ready from equipment leasing point of view duly supported by Chartered Engineer's certificate.</p>
xi)	<p>Vide your reply dated 01.03.2016, a copy of certificate dated 01.03.2013 of Mr. Santosh R Jaiswar Chartered Engineer was submitted in which it is mentioned that the said Solar Power Generating System was ready for generating power. It is observed that the Chartered Engineer who was</p>	<p>Certificate is issued on personal inspection. Though agreement is dated 14 March 2013, it is effective from 1 March 2013. This is as per oral understanding dated 1 March 2013.</p>

	<p><i>based in Thane, Mumbai has given the certificate, issued to you on dated 01.03.2013, in respect of Power Generating System which is installed at Kherwa Village, District Dhar of Madhya Pradesh, being ready for generating power. How could a Chartered Engineer certify the ready to use equipment pertaining to your concern, on a date, when on that day the lease agreement was not in existence.</i></p>	
xii)	<p><i>In view of the above, you are requested to show cause as to why the depreciation claimed by you on the said Solar Power Plant should not be disallowed as you have failed to prove that the said Solar Power Plant was acquired before the end of the Financial Year under consideration.</i></p>	<p><i>We have submitted --</i></p> <ul style="list-style-type: none"> <i>i) Confirmation from Real Gold for the cost.</i> <i>ii) Certificate for installation</i> <i>iii) Receipt of Lease rent for March 2013.</i> <i>iv) Confirmation of the lessee for payment of Lease rent.</i> <i>v) Account of concerned parties reflecting transactions.</i> <i>vi) Bills with Proof of delivery at M.P. of major items.</i> <i>vii) Memorandum reflecting object clause for leasing business.</i> <i>viii) Physical movement of assets.</i> <i>ix) Photographs (2) - identification.</i> <p><i>In view of the above, assets used for leasing business qualifies for deduction of depreciation."</i></p>

5. The identical finding has been recorded in the case of Sun Petrochemicals P.Ltd. Dissatisfied with the action of the AO, both the respondents went in appeal before the Id.first appellate authority. They have filed detailed written submissions, which has been reproduced by the Id.CIT(A). The Id.CIT(A) without making any analysis of the facts, discussed by the AO observed that in the case of Aditya Medisales Ltd. ("AMSL" for short) similar exercise was undertaken by the assessee. The Id.CIT(A)-1 has allowed the appeal of "AMSL". The Id.CIT(A) has reproduced the order of "AMSL", and thereafter observed that there is no disparity on the facts. Therefore, he concurred with Id.CIT(A)-1, who has allowed depreciation to "AMSL". The Id.CIT(A) accepted the claim of the assessee and allowed this ground of appeal. The brief discussion made by the Id.CIT(A) *qua* both the assessees is available in para 4.1.3 which reads as under:

"4.1.3. Since the facts are identical in the case of appellant also, I respectfully following the order of CIT(A)-1, Vadodara in the case of Aditya Medisales Ltd. hold that the appellant is entitled to claim the depreciation on the Solar Power Generation Plant owned by it and leased out during the year under consideration for earning lease rentals duly assessed as business income. Accordingly, the Assessing Officer is directed to allow the depreciation to the appellant. Thus, appellant succeeds in respect of Ground No. 2."

6. The Id.DR submitted that the Id.CIT(A) has not applied his mind on the facts highlighted by the Id.AO. The Id.CIT(A) simply concurred with Id.CIT(A)-1, Vadodra, who has granted depreciation to "AMSL". He pointed out that for allowing depreciation, two fundamental aspects are to be looked into; i.e. purchase on or before 31.3.2013, and asset would have been put to use for the purpose of business of the assessee. If the AO is able to demonstrate that the asset cannot be construed as put to use before the end of the accounting year, then the depreciation

will not be allowed to the assessee. He pointed out that it is not ascertainable, what were the facts in the case of "AMSL"; what type of inquiry the AO has made. But in the present two cases, the Id.AO has demonstrated that it could not have been stated that assets have been acquired and put to use by the assessee vis-à-vis documents produced before the AO. He made reference to page no.163 of the paper book, wherein lease deed dated 14.3.2013 has been placed on record. He submitted that though this deal was executed as such, but was made applicable w.e.f. 1.3.2013. He also made reference to the installation report, inspection report and so many other documents in order to demonstrate that practically it was not possible to construe that asset was put to use before 31st March. Impugning orders of the Id.CIT(A), he contended that the Id.CIT(A) failed to record any finding rebutting the facts pointed out by the AO. Finding of the AO is based on inquiry conducted in the cases of these assets, and that aspect could not be construed as covered with the case of "AMSL".

7. The Id.counsel for the assessee on the other hand submitted that 16 blocks were to be installed. Out of these 16 blocks, assesseees present before this Tribunal were required to only install 1.33 blocks i.e. block no.15 and 18 tables of block 10; block no.16, 18 tables of block no.10. Out of these total 16 numbers of blocks, "AMSL" purchased block no.14 and 17, tables of block no.10. In other words, his emphasis was that a composite of block of 16 which was operative. In the case of "AMSL", it was construed that this "SPP" commenced its work, and in other words, it is to be treated as put to use. Depreciation has been allowed to "AMSL". This order of the Id.CIT(A) has been accepted by the department in the case of "AMSL". No further appeal has been filed.

Thus, according to the ld.counsel for the assessee, department cannot be permitted to challenge order of the ld.CIT(A) in the present two cases.

8. We have duly considered rival contentions and gone through the record carefully. Section 32 of the Income Tax Act has directed bearing on the controversy, and therefore, it is imperative upon us to take note of relevant part of this section. It reads as under

32. (1) *In respect of depreciation of –*

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed –

9. A perusal of the above would indicate that in order to claim depreciation under section 32 of the Income Tax Act, the assessee has to demonstrate that it has owned an asset wholly or partly, and such asset has been used for the purpose of business or profession. Thus, for the purpose of controversy in hand, it is to be ascertained whether both the assesseees were able to prove on record that they have acquired the assets before end of the accounting year, and such assets have been put to use for the purpose of their business. The ld.AO has issued a detailed questionnaire and called for information on more than 12 counts. Brief analysis of such information was given in a tabular form. We have taken cognizance of such analysis in para 4 of this order. According to the AO, if setting of this information is being appreciated as a whole, then it would indicate that assesseees have failed to prove acquisition of the assets before the end of the accounting year as well as its user for the purpose of their business. The ld.AO has pointed out some

discrepancies specifically, the transportation details, inspection report, installation report etc. On the other hand, the Id.CIT(A) instead of making analysis of this information observed that this very issue has been considered in the case of other assesees i.e. AMSL who is also one of the contributors to the total block of assets. The emphasis of the Id.DR was that the Id.CIT(A) has overruled the discrepancies pointed out by the AO for demonstrating the fact that assets have been acquired before the end of the accounting year, and put to use without recording any finding or rebutting the reasoning of the AO. On the other hand, the stand of the assessee was that M/s.AIPL has acquired a contract from MP Power Management Co. Ltd. for establishment of a solar power plant. It has also entered into a power purchase agreement with MPPMCL. This is a composite solar power plant consisting of 16 blocks. It was installed, and later on M/s.Real Gold Developers LLP has purchased all these assets, and these were given on lease to AIPL. Assesees along with three more asseses have purchased these total 16 blocks of solar power plant. In the case of Aditya Medisales Ltd., department has accepted the establishment of solar power plant and allowed the depreciation. This order of the Id.CIT(A) was not challenged, thus, the same treatment be given to the purchase agreement and installation of SPP of the present asseses.

10. On due consideration of these facts, we are of the view that to some extent discrepancies pointed out by the AO and brought to our notice by the Id.CIT-DR do create a suspicion in our mind about the user of the assets for the purpose of business by the present assesees, but simultaneously if it is to be looked in such a manner that MP Power Management Co. Ltd. an instrumentality of Madhya Pradesh State

Government, has awarded a contract for establishment of 16 blocks of solar power plant, and such blocks were established, thereafter it as sold to Real Gold Developers LLP, and RGD LLP further sold these 16 blocks in part to five concerns including the present two assessees. It is to be appreciated that if this solar power plant of 16 blocks is an integrated power plant and part of the block purchased by present two assessees cannot work independently, then it is to be treated that the plant was established. Though there is no specific discussion on this point, and there is no conclusion, but we would like to take note of the fact that as far as purchase of these assets, its user for the purpose of business has not been denied by the AO himself in the subsequent year. He has allowed the depreciation to the assessee in the next assessment year. In the present year only dispute is year of admissibility of the depreciation. On account of some technical ground, if it is denied in this year, then it will be admissible in the next year, thus, considering stand of the Revenue in the case of Aditya Medisales Ltd. where such depreciation has been allowed and accepted, more so when no finding was recorded that the part of the assets owned by the assessees could be used independently for generation of power in a phased manner. We construe that blocks of panel owned by assessees be treated as integrated part of 16 blocks purchased and installed by AIPL and not to be treated separately. In other words, part of assets owned by these two assessees be treated as integrated part of total solar plant consisting of 16 blocks. If that be so, then installation of other blocks have been accepted by the department, and not challenged before the Tribunal. There is no disparity on the facts with regard to the blocks owned by the AMSL vis-à-vis of the assessee. We are of the view that there is no justification to

interfere in the finding of the Id.CIT(A) in the cases of present two assesseees also. Therefore, we do not find any merit in these two appeals; they are dismissed.

11. In the result, both the appeals of the Revenue are dismissed.

Pronounced in the Open Court on 11th May, 2020.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**