

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2184/Bang/2017
(Assessment Year: 2008-09)

M/s. Mersen India Pvt. Ltd.,
No.5, Bommasandra Indl. Area,
Anekal Taluk, Hosur Road,
Bangalore-560 099
PAN AAACE 3191K

....Appellant

Vs.

Jt. Commissioner of Income Tax,
Circle 11(2), Bangalore.

.....Respondent.

Assessee By:	Shri Tata Krishna, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	03.09.2020.
Date of Pronouncement :	11.09.2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Bangalore dt.30.01.2012 for the Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal :

2. As regards refusing to accept the revised return and adding Rs.84,49,131/- being the difference between the income returned as per original return and the income as per revised return:

2.1. The Learned Commissioner (Appeals) having accepted the statutory provisions under the IT Act and judicial precedence in accepting the revised return under section 139 (5) of the IT Act, ought to have accepted the revised return filed by the Appellant when it had justifiable reason for filing revised return and more particularly when it had reconciled, explained & substantiated its explanation with documentary evidences with respect to each of the line items of difference between original return and revised return.

2.2. The Learned Commissioner (Appeals) is not justified in upholding the addition of Rs. 84,49,131/- being the difference between the original return and the revised return.

3. As regards disallowing Rs. 3,50,544/- being 25% of the purchase of tools which were written off during the year:

3.1. The Learned Commissioner (Appeals) is not justified in upholding the disallowance of Rs.3,50,544/- being 25% of the purchase of loose tools which were written off during the year.

3.2. The Learned Commissioner (Appeals) is not justified in failing to appreciate that the tools are neither plant nor machinery and hence are not the depreciable assets requiring capitalization. He has failed to

appreciate that tools are essentially revenue items and the entire expenditure on them is liable to be written off at 100% and not just at 25%.

3.3. The Learned Commissioner (Appeals) is not justified in holding that the tools are plant and machinery by misconstruing the same with the spare parts.

3.4. Without prejudice to the above, the Learned Commissioner (Appeals) is not justified in allowing only 15% depreciation that too only on 25% of the purchase value [instead of on the purchase value of tools] thereby granting depreciation effectively at the rate of 3.75%.

3.5. Without prejudice to the above, the Learned Commissioner (Appeals) having held that the aforesaid expenditure is required to be capitalised, ought to have directed allowance of additional depreciation under section 32(1)(iia).

4. As regards disallowing Rs. 1,15,897/- being sundry purchases:

4.1. The Learned Commissioner (Appeals) is not justified in disallowing Rs.1,15,897/- being the sundry purchases which were written off during the year.

4.2. The Learned Commissioner (Appeals) and Learned Assessing Officer are not justified in treating the aforesaid expenditure as capital and allowing depreciation at the rate of 10% without even categorizing the said sundry purchases are either plant, machinery, building, furniture or fixture. The Learned lower authorities have failed to appreciate that sundry purchases are essentially the revenue items and the entire expenditure on them is liable to be written off.

4.3. Without prejudice to the above, the Learned Commissioner (Appeals) and Learned Assessing Officer are not justified in allowing only 10%

depreciation on the sundry purchases as the same cannot be regarded as furniture and fixture and if at all the same has to be capitalized, it has to be capitalized under plant and machinery requiring depreciation at the rate of 15%.

4.4. Without prejudice to the above, Learned Commissioner (Appeals) ought to have allowed additional depreciation under section 32 (1) (iia).

3. The assessee has also raised additional ground as follows :

“ 4.5 The Learned Commissioner (Appeals) is not justified in disallowing Rs.1,15,897/- when Appellant has not claimed the deduction in the return of income.”

4. The assessee filed a petition for admission of the additional ground, this ground was inadvertently missed in the original grounds of appeal. It is submitted that the above ground may be disposed off based on facts of the record. Thus the raising of above ground is not mala fide and co-related to the original ground No.3. Accordingly by placing reliance on the decision of NTPC reported in 225 ITR 383, we are admitting the additional grounds for adjudication since the relevant facts of the issue is already available on record.

5. The facts of the case are that the assessee company is engaged in the business of manufacture and sale of carbon blocks and brushes, fuses and heat exchangers

and trading of fuses. The assessee filed its original Return of Income for the Assessment Year 2008-09 on 30.09.2008 declaring income of Rs.2,14,69,131. Subsequently, the revised return of income was filed on 1.4.2009 declaring income of Rs.1,30,20,000. The Assessing Officer completed the assessment under Section 143(3) of the Act after making the following additions / disallowances :-

- i. Disallowance against purchase of toolsRs.3,50,544.
- ii. Disallowance relating to delay in remitting employee's contribution to PF & ESIC of Rs.2,68,794.
- iii. Disallowance of contribution made towards super annuation fund of Rs.11,89,000.
- iv. Disallowance made u/s.14A of Rs.1,65,000.
- v. Disallowance of Rs.1,15,897 being sundry charges.
- vi. Addition of Rs.4,49,519 as prior period expenses.
- vii. Levy of interest u/s. 234B of Rs.4,39,258.

Refusal on the part of JCIT to accept the revised return which reflected lower income. On appeal, inter alia, confirming the disallowances and finally made disallowances by CIT(Appeals) as follows :

- (i) Purchase of loose tools : Rs.3,50,544.
- (ii) Disallowance of Rs.1,15,897 being sundry charges.
- (iii) Confirming the addition of Rs.84,49,131 being difference between original return and revised return.

Hence the assessee is in appeal before us.

5.1 First ground is regarding refusal to accept the revised return of income and upholding the addition of Rs.84,49,131 being the difference between the original return and revised return of income.

6. The learned Authorised Representative submitted that due to change over in Accounting System during the assessment year, the assessee had some major problem to be sorted out tallying the completion of accounts in the F.Y. 2007-08. Hence the assessee failed to file its audited accounts within the due date to file Audit Report, so the assessee filed its Return of Income on 30.09.2008 based on unaudited financial statements so as to comply the requirement of Income Tax Act. Thus there was difference between the figures in unaudited financial statements and audited financial statements and net result was decreased in profits of Rs.84,49,131 that forced the assessee to file Revised Return under Section 139(5) of the Act. The learned Authorised Representative submitted that the Revised Return filed by the assessee is within the time allowed under Section 139(5) of the Act and being so once the Revised Return is filed under Section 139(5) of the Act, the original return is substituted by Revised Return consequently the assessment framed according to the Revised Return only. For this purpose he relied on the decision in the case of Chief Commissioner of Income Tax Vs. Machine Tools Corporation India Ltd. 201 ITR 101 (Kar). He also relied on the judgement of CIT

Vs. Mangalore Chemicals & Fertilisers Ltd. 191 ITR 256 and Dharmpur Sugar Mills Ltd. Vs. CIT 90 ITR 236 (Allahabad) and CIT Vs. UPR NN Limited 36 Taxman.com 96. The ld. AR also relied on UPRNN Ltd. Vs. ITO 24 SOT 139 where the assessee filed Revised Return on the basis of audited accounts. The depreciation cannot be relied on the original return which is based on unaudited books of accounts and Assessing Officer shall consider the Revised Return of income only.

7. On the other hand, the learned Departmental Representative relied on the lower authorities.

8. We have heard the rival contentions, perused and carefully considered the material on record. In the present case admittedly the assessee filed original return of income based on unaudited accounts within the due date of filing i.e. on 30.09.2008. Later the assessee filed the Revised Return of Income on 1.4.2009 which is the basis of audited books of accounts which is within the due date prescribed under Section 139(5) of the Act. The assessee also explained the reasons for filing the Revised Return of Income that there was change over in the Accounting System during the year under consideration and it took time for the completion of accounts thereby auditing of the same. These facts are not disputed by the Department. However, the Assessing Officer made additions towards the difference between the income in original return and revised return at

Rs.84,49,131 giving various technical reasons. In our opinion, unless and until the Assessing Officer rejected the Revised Return on the basis of discrepancies in Books of Accounts it is not possible to make such an addition. If there is any defect in the Books of Accounts he specifically point out the same and make specific addition. Being so, when the Books of Accounts are duly audited and approved by the AGM, the assessment has to be completed on the basis of Revised Return. There is no scope of taking the difference in income declared in the original return and revised return as additional income of the assessee. We are completely in agreement with the contention of the Id. Counsel for the assessee that the Assessing Officer cannot consider the income declared in the original return based on the unaudited books of accounts over the income declared in revised return based on the audited books of accounts. We direct the Assessing Officer to complete the assessment on the basis of the Revised Return based on the audited books of accounts. This ground of appeal is allowed.

8. The ground relating to disallowance of Rs.1,15,897 being sundry charges and additional ground is that said amount has not claimed as deduction in the Return of Income. The assessee charged sundry charges an amount of Rs.1,28,774 to P & L Account being asset costing less than Rs.5,000 which was written off. The Assessing Officer called for explanation from the assessee wherein it was stated that it has been charged to the P & L Account as per the

Companies Act, however, the same has not been added back while computing the Income Tax under the provisions of the Act. Aggrieved by the Assessment Order, the assessee filed an appeal with the CIT(Appeals). The CIT(Appeals) confirmed the action of the Assessing Officer on this ground. The assessee is in appeal before us.

9. We have heard the rival contentions, perused and carefully considered the material on record. Neither the Assessing Officer nor the CIT(Appeals) has examined the relevant bills for disallowance of Rs.1,15,897 being the sundry charges. Before us, the learned Authorised Representative made an argument that this is a revenue expenditure. Without prejudice this, it is submitted that it is a plant and machinery entitled for depreciation @ 15%. At the time of hearing it was submitted by the ld. AR that the assessee has not charged any expenditure towards sundry charges to the P & L Account and the Assessing Officer wrongly noted that the assessee has charged the expenditure to P & L Account. According to him, the Assessing Officer considered the sundry charges at Rs.1,28,744 and granted 10% depreciation and disallowed Rs.1,15,897 which is incorrect. In our opinion, it is appropriate to remit this issue to the file of Assessing Officer for reconsideration to decide whether it is revenue expenditure or capital expenditure, if it is a capital expenditure, depreciation is to be granted at applicable rate. Both additional ground and main ground are allowed for statistical purposes.

10. Next ground is regarding disallowance of Rs.3,50,544 being 25% of charges of tools which are written off during the year. The assessee has debited a sum of Rs.3,50,544 as being the charges of tools written off. It was submitted before the Assessing Officer that the assessee has practice of writing off of 25% of charges of tools in each assessment year. According to the Assessing Officer, it has to be grouped under the head Block of Assets and depreciation to be claimed at applicable rate. The Assessing Officer disallowed the amount and granted depreciation @ 10%. On appeal, the CIT(Appeals) confirmed the action of the Assessing Officer on this issue. Aggrieved by the assessee, the assessee is in appeal before us.

11. We have heard the rival contentions, perused and carefully considered the material on record. The learned Authorised Representative submitted that the loose tools is nothing but inventories and have no span of life and the loose tools to be considered as inventories awaiting to use in product process and same to be accounted at cost or net realizable value whichever is lower as prescribed in A.S. II of ICAI. According to Id. AR, the assessee has been following the Inventory Policy on valuation of loose tools which is disclosed in Schedule 18 (vii) to audited financial statements. “Loose Tools are charged of consumption @ 25% per annum on the reducing balance method.” The net realizable value of inventory are considered and valued at 75% of the processing value. In our opinion, the method

adopted by the assessee to value the loose tools is justified. The loose tools are neither plant nor machinery nor buildings nor furniture nor fixtures and method valued by the assessee consistently accepted by the revenue authorities. Accordingly, we allow this ground of appeal of the assessee.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

(SMT. BEENA PILLAI)
JUDICIAL MEMBER

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: .09.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore