

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER
AND
SHRI S.S. GODARA, JUDICIAL MEMBER

	ITA No. 111/Hyd/2019		
	A.Y. 2010-11		
DCIT, Circle-16(2), Hyderabad.	Vs	Penna Cement Industries Limited, Hyderabad. PAN: AABCP 2290 D	
(Appellant)		(Respondent)	
Assessee by:	Shri A.V. Raghuram		
Revenue by:	Shri Sunil Kumar Pandey, DR		
Date of hearing:	08/02/2021		
Date of pronouncement:	23/02/2021		

ORDER

PER A. MOHAN ALANKAMONY, AM:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-4, Hyderabad in appeal No. 10079/DCIT, Cir-16(2)/17-18/CIT(A)-4-4/Hyd/2018-19, dated 30/11/2018 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the A.Y.2010-11.

2. The Revenue has raised two grounds in its appeal however, the crux of the issue is that the Ld. CIT (A) has erred in directing the Ld. AO to allow depreciation @ 100% on Civil Structure.

3. The brief facts of the case are that the assessee is a Limited Company engaged in the business of manufacturing and sale of Port Land Cement and generation power filed its return of income for the AY 2010-11 on 28/09/2010. Thereafter, the case was taken up for scrutiny and assessment was completed U/s. 143(3) r.w.s 147 of the Act on 04/05/2017 wherein the Ld. AO disallowed the claim of depreciation @ 100% towards the cost of construction of Chimney and bag-house which was required for installing Air Pollution Equipment in the plant. On appeal, the Ld. CIT (A) relying on certain decisions of the Tribunal held that the building and the chimney is an integral part of the plant and therefore the assessee is entitled to claim depreciation @ 100% as per the Rules.

4. The Ld. DR vehemently argued in support of the order of the Ld. AO stating that the building constructed by the assessee cannot be held as an integral part of the plant. Ld. AR on the other hand relied on the decision of the Hon'ble Apex Court in the case of CIT vs. Karnataka Power Corporation reported in 247

ITR 268 wherein it was held that the assessee's generating station building which was constructed as an integral part of the plant is entitled for investment allowance and also the Order of the Ld. CIT (A) in the case of the assessee.

5. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it appears that the civil structure constructed by the assessee is a normal building wherein an Electrostatic Precipitator is housed. The chimney constructed also appears to be a normal civil structure and the aggregate cost of construction of both the structure is only Rs. 1.72 Crs. Therefore, these civil constructions cannot be treated as a specialised structure forming part of the plant. Only a specialised civil structure integrated with the plant can be treated as a plant. Further, as per the Income Tax Rules, new Appendix-1, which is w.e.f 2006-07 onwards the Table of Rates at which the depreciation is allowable for building is as follows:-

<i>PART A</i> TANGIBLE ASSETS	
I. Building [See Notes 1 to 4 below this Table]	
(1) Buildings which are used mainly for residential purposes except hotels and boarding houses	5
(2) Buildings other than those used mainly for residential purposes and not covered by sub-items (1) above and (3) below	10
(3) Buildings acquired on or after the 1st day of September, 2002 for installing machinery and plant forming part of	[100]

water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities under clause (i) of sub-section (4) of section 80-IA	
(4) Purely temporary erections such as wooden structures	[100]

6. From the above, it is apparent that the Normal civil structures constructed by the assessee will be entitled to depreciation only @ 10% as per the IT Rules extracted herein above. We also are of the view that the correct nature of the structures erected by the assessee is not properly examined by the Ld. Revenue Authorities. Therefore, in the interest of justice, we hereby remit the entire matter back to the file of the Ld. AO for de-novo consideration.

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Pronounced in the open Court on the 23rd February, 2021.

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

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd February, 2021.

OKK
Copy to:-

- 1) (i) M/s. Penna Cement Industries Limited, Plot No. 705, Lakshmvias, Road No.3, Banjara Hills, Hyderabad – 500 034.
- 2) The Dy. Commissioner of Income Tax, Circle-16(2), 2nd Floor, B-Block, IT Towers, AC Guards, Masab Tank, Hyderabad.
- 3) The Commissioner of Income Tax (Appeals)-4. Hyderabad.
- 4) The Principal Commissioner of Income Tax-4, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File