

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.9009/Del/2019
Assessment Year: 2014-15

Lord Krishna Rice Mills,
C/o S.B. Gupta, Advocate,
3/93, Mall Road,
Karnal,
Haryana.

Vs ITO,
Ward-2,
Karnal.

PAN : AABFL5926H

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Mrs. Shivani Bansal, Sr. DR
Date of Hearing	:	10.03.2021
Date of Pronouncement	:	18.03.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 27th September, 2019 of the CIT(A), Karnal, relating to the assessment year 2014-15.

2. Facts of the case, in brief, are that the assessee is a partnership firm and derives income from manufacturing and trading of rice by husking of paddy and sales thereof. It filed its return of income on 25th September, 2013 declaring an income of Rs.3,41,830/-. The AO completed the assessment u/s 143(3) of the Act on 15th February, 2016 determining the total income of the assessee at

Rs.7,65,330/- wherein he made certain additions. During the course of assessment proceedings, the assessee has claimed additional depreciation on purchase of machinery of Rs.1,17,14,501/-. The claim of the assessee for additional depreciation was rejected by the AO keeping in view of the decision of the Hon'ble Supreme Court in the case of M/s Goetze (India) Ltd. vs. CIT reported in 284 ITR 323, since the said additional depreciation was not claimed by the assessee either in the original return or through the revised return.

3. Before the CIT(A), apart from challenging the other additions, the assessee challenged the order of the AO in denying the claim of additional depreciation which is the subject matter of appeal before the Tribunal. However, the Id.CIT(A) dismissed the claim of additional depreciation raised before him by observing as under:-

“I have examined the facts of the case, the remand report of the Assessing Officer (A.O.) and the counter comments of the appellant.

In this case, a claim had been made at the assessment stage for additional depreciation. The AO denied the claim by relying on the Hon'ble Supreme Court's decision in the case of M/s Goetze (India) Ltd. vs. CIT (2006) ITR 323 (SC) wherein it has been clearly stated that additional claim for deduction can be entertained only if a revised return has been filed. In this case, no revised return was filed. Moreover, the case law cited by the appellant focus attention to the proceedings at the level of the Hon'ble ITAT and not at the level AO and CIT(A). Therefore, it is not applicable to the instant case. Hence, I confirm the disallowance made in this regard.”

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

01. That the order of the Learned CIT(A), Karnal is against law and facts.
2. The claim of additional Depreciation made during assessment proceedings should have been allowed in view of section 32(1) as A.O. is bound to allow additional Depreciation in view of explanation 5 to section 32(1).
3. That claim for additional Depreciation even made during assessment proceedings should have been allowed by A.O. in view of Board Circular No. 14(XI-35) of 1955 dated April 11, 1955 as the A.O. is bound by the circular.
4. That case of the assessee is covered by Judgement passed by Hon'ble ITAT Bangalore Bench B in case of Rakesh Singh Vs. ACIT in Appeal No. 1027(BANG) of 2011 for A.Y. 2007-08.
5. None appeared on behalf of the assessee. We, therefore, proceed to decide the issue on the basis of material available on record and after hearing the ld. DR.
 - 5.1 The issue to be decided in the instant case is as to whether the assessee can claim additional depreciation which was not claimed in the original return or not claimed through revised return, but, was claimed during the course of assessment proceedings. As per the decision of the Hon'ble Supreme Court in the case of M/s Goetze (India) Ltd. vs. CIT (supra), the decision was limited to the powers of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal u/s 254 of the Income-tax Act, 1961. We, therefore, direct the AO to adjudicate the issue of additional depreciation which was not claimed by the assessee either in the original return or during the revised return on the basis of the fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The order was pronounced in the open court on 18th March, 2021..

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th March, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi