

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.1615/Chny/2019
निर्धारण वर्ष/Assessment Year: 2014-15

The Joint Commissioner of Income
Tax (OSD), Corporate Circle 2(2),
Room No. 512, 5th Floor, Wanaparthy
Block, No. 121, M.G. Road,
Chennai 600 034.

M/s. India Piston Ltd.,
Vs. Huzur Gardens,
Madhavaram High Road,
Sembiam, Chennai 600 011.

[PAN:AAACI1439E]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri G. Johnson, Addl. CIT
Assessee by : Shri Vikram Vijayaraghavan, Advocate
सुनवाई की तारीख/ Date of hearing : 23.03.2021
घोषणा की तारीख /Date of Pronouncement : 09.04.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 5, Chennai dated 18.03.2019 relevant to the assessment year 2014-15. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in directing the Assessing Officer to allow the assessee's claim of additional depreciation by relying on the decision of Hon'ble High Court of Madras in the case of M/s. Brakes India Limited.

2. Facts relating to the disallowance of additional depreciation are that the assessee has claimed additional depreciation of ₹.3,68,97,816/- as carry forward depreciation in the last previous year. In the assessment order, the Assessing Officer has noticed that the claim of the assessee relates to assets acquired in the preceding assessment year, wherein, the assets were used for less than 180 days and only 10% of depreciation was claimed in earlier year. Thus, in the present assessment year, the assessee has claimed the residual 10% of the additional depreciation. The Assessing Officer has held that the assessee cannot claim the balance 10% of depreciation in the subsequent year as per provisions of section 32(1)(iia) of the Act by following the decision in the case of MM Forgings Ltd. v. Addl. CIT 349 ITR 673 (Mad). On appeal, by following the decision in the case of Brakes India Ltd. v. DCIT in T.C. A. No. 551 of 2013 dated 14.03.2017 as well as the decisions of the Tribunal in assessee's own case, the Id. CIT(A) directed the Assessing Officer to delete the addition made on account of disallowance of additional depreciation claimed by the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. DR has submitted that the Id. CIT(A) has erred in directing the Assessing Officer to allow the assessee's claim of additional depreciation by relying on the decision in the case of Brakes India Ltd on the ground that the issue involved relates to the assessment year

2014-15, whereas the amendment to section 32(1)(iia) by Finance Act 2015 came into force only from 01.04.2016 and not retrospectively. On the other hand, the Id. Counsel for the assessee strongly supported the appellate order as well as various orders of the Tribunal in assessee's own case.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The claim of additional depreciation was subject matter in appeal before the Tribunal in assessee's own case in the assessment years 2006-07, 2007-08 as well as in the assessment year 2012-13. Vide order in I.T.A. No. 3346/Chny/2016 for the assessment year 2012-13, the Coordinate Benches of the Tribunal has observed and held as under:

“6. We have heard both sides, perused the materials on record and gone through the orders of authorities below. The issue involved in the appeal of the assessee is when the assessee has used new plant and machinery less than 180 days, whether the assessee is eligible for remaining balance of 50% of additional depreciation in subsequent year by carry forwarding the claim. In this case, the assessee has submitted that only 10% of depreciation was claimed in the year of installation since the assets were used for less than 180 days only. Therefore, the balance 10% of depreciation has been claimed in the subsequent year relevant to the assessment year under consideration. The claim of the assessee was denied by the Assessing Officer on the ground that the statute does not provide carry forward the additional depreciation under section 32(1)(iia) of the Act and the same was confirmed by the CIT(A).

7. *In the case of M.M. Forgings Ltd. v. Addl. CIT 349 ITR 673 (Mad)], the Hon'ble Jurisdictional High Court has considered the issue of additional depreciation and also interpreted section 32(1) and 32(1)(iia) and held that if the assessee has used the new plant and machinery below 180 days, it is only eligible for 50% of the additional depreciation as provided in the statute by observing as under:*

“3. The Assessing Authority by applying the second proviso to section 32(1) of the Act, restricted the allowability of the depreciation

to 50 per cent of the amount permissible under section 32(1)(iia) of the Act. According to the appellant, when it satisfied all the conditions stipulated under the provisos to section 32(1)(iia) of the Act, the Assessing Authority ought not to have restricted the depreciation permissible under the said section by resorting to the second proviso to section 32(1) of the Act. The learned counsel however fairly pointed out before us that in the second proviso to section 32(1) of the Act, that very clause (iia) itself was inserted by Finance Act, 2002 with effect from 01.04.2003. Therefore, it was imperative that on and after 01.04.2003, the claim of the assessee made under section 32(1)(iia) of the Act, had to be necessarily assessed by applying the second proviso to section 32(1) of the Act. Therefore, when there was statutory stipulation providing for restriction to 50 per cent of the amount allowable under section 32(1)(iia) of the Act, no fault can be found with the conclusion of the Assessing Authority as well as that of the Appellate Authority and the Tribunal in having affirmed the action of the Assessing Authority. We, therefore, do not find any scope to entertain the said question of law.”

8. *From the above decision of the Hon'ble Jurisdictional High Court, it is clear that when the new asset acquired and put it in use for less than 180 days, as per the provisions of section 32(1)(iia) of the Act, the assessee cannot claim 100% additional depreciation and therefore, restricted 50% of the eligible additional depreciation to the assessee. This case law relied on by the ld. DR has no application to the facts of the present case. If the new asset acquired and installed and put it in use for more than 180 days, the assessee is eligible to claim 20% of additional depreciation. In the present case, the new asset acquired, installed and put it in use for less than 180 days, the assessee has claimed only 10% of the eligible additional depreciation in the relevant assessment year, which was allowed. Since the assessee was eligible to claim 20% additional depreciation on new asset acquired, the balance 10% of additional depreciation was claimed in the next year relevant to the assessment year under consideration. In similar facts and circumstances, in the case of CIT v. Rittal India Private Limited (supra), the Hon'ble Karnataka High Court has observed and held as under:*

“7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.

8. *The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, OF*

that it should be claimed in one year, have been done away by substituting clause (iia) with effect from 01.0.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause [ii] of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. *The language used in Clause (iia) of the said section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can. be claimed in one year, if plant and machinery is put to use for less than 180 days said financial year.very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed.*

10. *has been consistently held by this Court, as well as the Apex Court, that beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a onetime benefit to encourage industrialization, and provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance. We are in full agreement with such observations made by the Tribunal."*

9. *In view of the above judgement of Hon'ble Karnataka High Court, we are of the considered opinion that the ld. CIT(A) has rightly followed the above judgement and directed the Assessing Officer to allow additional depreciation. Thus, we find no infirmity in the order passed by the ld. CIT(A) on this issue and the ground raised by the Revenue is dismissed."*

The Id. DR could not controvert the above decision of the Tribunal. Respectfully following the above decision of the Tribunal, we find no reason to interfere with the order passed by the Id. CIT(A) on this issue. Moreover, the Id. DR has not explained the impact on the amendment made vide Finance Act, 2015 with effect from 01.04.2016 by substituting “or in the business of generation or generation and distribution” in the existing sub-section (iia) to section 32(1) of the Act to the earlier decisions of the Tribunal or the decision of the Hon’ble Madras High Court in the case of Brakes India Ltd. v. DCIT (supra) or the decision of Hon’ble Karnataka High Court in the case of CIT v. Rittal India (P) Ltd. (supra). Accordingly, the ground raised by the Revenue stands dismissed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 9th April, 2021 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 09.04.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.