

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI**

(Through Video Conferencing)

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT AND
SHRI KUL BHARAT, HON'BLE JUDICIAL MEMBER**

**ITA No.5825/DEL/2017
[Assessment Year: 2014-15]**

ACIT, Central Circle-29, New Delhi Room no. 318, 3 rd floor, ARA Centre, Jhandewalan Extn., New Delhi.	M/s Abhisar Buildwell (P) Ltd. 1711, S.P. Mukherjee Marg, Delhi-110006
	PAN-AAFCA6845D
Appellant	Respondent

Revenue by	Shri Vijay Kumar Kataria, Sr. DR
Assessee by	Sh. R.S. Singvi, CA

Date of Hearing	10.09.2021
Date of Pronouncement	10.09.2021

ORDER

PER KUL BHARAT, JM,

This appeal filed by the Revenue is directed against the order dated 05.06.2017 of the learned CIT(A)-30, New Delhi, relating to Assessment year 2014-15. The solitary ground raised in this appeal is relating to deletion of addition of Rs. 4,12,17,481/- by the Ld. CIT(A).

2. At the outset, Ld. A.R. for the assessee submitted that the issue in dispute is squarely covered by the decisions of the ITAT, Delhi in favour of assessee in assessee's own case in earlier years i.e. 2011-12, 2012-13 & 2013-

14. For ready reference, he placed the copies of the orders of ITAT, Delhi Benches in respect of aforesaid assessment years. Accordingly, he requested that following the precedents as aforesaid, the instant issue may be decided in favour of the assessee in the instant Revenue's appeal and the appeal of the Revenue may be dismissed by upholding the order of the Ld. CIT(A) for the instant assessment year.

3. On the contrary, Ld. DR has submitted that since the Department has preferred appeals before the Hon'ble Delhi High Court against the orders of the Tribunal in earlier years, therefore, the present appeal of the Revenue may be allowed.

4. We have heard the rival submissions and perused the records especially the order of the Tribunal in assessee's own case in earlier assessment years, wherein the similar issue has been decided in favour of the Assessee and Revenue's appeals have been dismissed by upholding the order of the Ld. CIT(A). We find that in the assessment years 2012-13 & 2013-14 in ITA Nos. 5129 & 5130/Del/2015 in assessee's own case the ITAT, Delhi Bench has observed as under :-

"7. We find that in assessment year 2011-12, in ITA No. 823/Del/2015 in the case of the assessee itself, the excise refund has been held as revenue receipt and disallowance made on account of depreciation has been deleted by observing as under:-

13. So far as question of treating the refund of excise duty as part of the cost is concerned, it is the case of the assessee that the entire cost has been paid

by the assessee for plant and machinery and as such, it cannot be reduced from the cost of asset. Ld. AR for the assessee relied upon order passed by CIT(A) dated 15.7.2016 in assessee's won case for AYs 2012-13 and 2013-14 wherein excise duty refund has not been treated in the form of capital subsidy or grant which can be reduced from the cost of assets.

14. Since findings returned by the Ld. CIT(A) are based upon the decision rendered by Hon'ble Apex Court in CIT vs. Meghalaya Steels Ltd. (2016) 383 ITR 217 (SC), we are of the considered view that the excise refund is in the nature of revenue receipt forming part of profits and gains arising from the business and as such cannot be reduced from the cost of plant and machinery. So, the findings returned by Ld. CIT(A) on this issue are confirmed.

14. In view of what has been discussed above, we are of the considered view that AO as well as CIT(A) have erred in making addition of Rs. 6,40,38,391/- by disallowing the claim of depreciation of the asset made u/s. 32 of the Act which would further entitle to the assessee the benefit of deduction u/s. 80IC on profits enhanced by such disallowances made u/s. 32 of the Act. Consequently, appeal filed by the assessee is partly allowed.

8. In view of the identical question of whether the receipt of excise refund is capital receipt or revenue receipt and whether the same will go to reduce the actual cost of asset is involved in the year under consideration, and thus respectfully following the findings of the Tribunal in ITA No. 4990/Del/2014 and ITA No. 823/Del/2015, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The grounds of the appeal raised by the Revenue in both the assessment years are dismissed.

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

5. Thus on identical facts in preceding years the ITAT, Delhi Bench has decided the issue in dispute in assessee's favour in assessee's own case, as

aforesaid. Hence, respectfully following the precedents as above, we uphold the order of the Ld. CIT(A) and decide the issue in favour of the assessee and against the Revenue.

6. In the result, the Revenue's appeal is dismissed.

Order was pronounced in the open court on 10/09/2021.

Sd/-

**[G.S. PANNU]
PRESIDENT**

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Delhi; Dated: 10/09/2021.

SHASHI SHEKHAR

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi