

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 2016/DEL/2018 (A.Y 2014-15)

(THROUGH VIDEO CONFERENCING)

Addl. CIT Special Range-9 C. R. Building, New Delhi (APPELLANT)	Vs	The fertilizer Corporation of India Ltd. PDIL Bhawan (5 th Floor), A- 14, Sector-1 Noida, Uttar Pradesh AAACF1661P (RESPONDENT)
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Appellant by	None
Respondent by	Dr. Mahinder Kaur, Sr. DR

Date of Hearing	06.09.2021
Date of Pronouncement	06.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 07/12/2017 passed by CIT(A)-16, New Delhi for assessment year 2014-15.

2. The grounds of appeal are as under:-

1. *“That the Ld.CIT(A) has erred in law and facts by allowing the claim of depreciation without appreciating the fact that mere purchase of the asset does not make it eligible for claim of depreciation unless it is put to use for the business activity.”*

3. It is clearly mentioned in the assessment order that during the previous year relating to the Assessment Year under consideration, the assessee did not derive any business income due to various financial constraints and could not operate its balance due to heavy financial losses. The Company was referred to BIFR which recommended for winding up of the Company. The Assessing Officer made addition/disallowance in respect of claim of depreciation for Rs.2,67,09,834/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) allowed the appeal of the assessee.

5. At the time of hearing despite giving notice none appeared on behalf of the assessee. Therefore, we are proceeding on the basis of the contentions taken by the assessee before the Assessing Officer and the CIT (A).

6. The Ld. DR relied upon the assessment order.

7. We have heard Ld. AR and perused all the relevant material available on record. From the perusal of the order of the CIT(A) in para 6, it is observed that the reason for disallowance is that no manufacturing was carried out during the year meaning thereby that the assets concern were not put to use as per the finding of the Assessing Officer. The assessee filed a copy of the Appellate order dated 25/2/2016 in assessee's own case for Assessment Year 2005-06 wherein this issue was considered and the assessee's claim towards depreciation was allowed. The assessee submitted before the CIT(A) that orders of the CIT(A) for Assessment Year 2006-07, 2008-09, 2009-10 & 2013-14 was decided in assessee's favour. The CIT(A) has also relied upon the decision of the Hon'ble Delhi High Court in case of CIT Vs. Qswal Agro Mills Ltd. 341 ITR 467 as well as order of Tribunal in Swati Synthetic Ltd. Vs. ITO (2010) 38 SOT

208. Before us, no distinguishing facts were presented by the Revenue from the earlier years. Therefore, we find that there is no discrepancy in the order of the CIT(A) and we are not inclined to interfere with the observations made by the CIT(A). Hence, the appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 06th Day of September, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 06/09/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

