

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 7815/DEL/2017 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

Classic Auto Tubes Ltd. 414/1, 4 th Floor, DDA Commercial Complex, District Centre, Janak Puri, New Delhi PAN: AACCC6993K (APPELLANT)	Vs	Addl. CIT Special Range-2 New Delhi (RESPONDENT)
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Appellant by	Sh. M. K. Giri, Adv
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of Hearing	11.10.2021
Date of Pronouncement	11.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 19/10/2017 passed by CIT(A)-2, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

1. "1. That the order passed by the learned Commissioner of Income Tax (Appeals) is bad in law, equity and justice.
2. That the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of additional depreciation of Rs. 57,91,898/- claimed by the assessee company @ 10% in respect on new plant & machinery acquired by it after September 30, 2012 (AY 2013-14).

The quantum of additional depreciation allowable in respect of these assets was restricted to 50 percent of 20 percent of the actual cost of machinery in assessment year 2013-14 in view of the restrictive provision provided under the Act (i.e. as per the second proviso to section 32(1) of the Act). The balance 50% of additional depreciation amounting to Rs. 57,91,898/- has been claimed during the assessment year 2014-15.

The learned Commissioner of Income Tax (Appeals) ignored to consider the submissions made by the appellant placing reliance on various judicial pronouncements of Karnataka High Court (Commissioner of Income Tax and another V. Rittal India - ITA No. 268/2014, vide order dated 24.11.2015 & Commissioner of Income Tax and another V. Rittal India - ITA No. 590/2015, vide order dated 4.11.2016), jurisdictional Delhi ITAT (Cosmo Films Ltd Vs DCIT in ITA No. 2508/Del/2007 dated 5.8.2011) & Cochin ITAT (Apollo Tyres Ltd Vs ACIT, Circle-1, Range-1, Kochi, [2014] 45 taxmann.com vide order dated 20/12/2013 in ITA No. 616/Coch/2011).

3. *That the learned Commissioner of Income Tax (Appeals) erred in confirming the addition on account of interest income adjusted with MSEB of Rs. K 9,56,-530/-.*

4. *That the learned Commissioner of Income Tax (Appeals) erred in confirming the addition on account of undisclosed income / TDS of Rs. 62,970/-."*

3. The assessee company is engaged in the business of manufacturing of auto motive butyl tubes, tyres building machines, moulds and compound mixing. The assessee Company filed its return of income of Rs. 43,36,31,320/- on 30/11/2014. The assessee claimed amount of Rs.57,91,898/- on account of additional depreciation at 10% in respect of new machinery and plant acquired by the assessee. The Assessing Officer disallowed the said additional depreciation and made addition of Rs.57,91,898/-. The Assessing Officer also

made addition of Rs. 9,56,513/- towards interest income adjustment with MSEB. The Assessing Officer also made addition of Rs. 62,917/- on account of undisclosed income/TDS as well as Rs. 23,75,190/- towards interest on refund.

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

5. The Ld. AR submitted that the additional depreciation claimed by the assessee was according to the provisions of Section 32(1)(ia) which was introduced in the Finance Act, 2002 as an incentive provision for fresh investments in the Industrial Sector w.e.f. 1/4/2003. During the Assessment Year 2013-14 the assessee claimed additional depreciation of Rs. 57,91,898/- at 10% in respect of new Plant and Machinery acquired after 30/09/2012. The quantum of additional depreciation allowable in respect of these assets was restricted to 50% to that of 20% of the actual cost of machinery in Assessment Year 2013-14 in view of the restrictive provisions provided under the Act (i.e. as per second proviso to Section 32(1) of the Act). The balance 50% of additional depreciation amounting to Rs. 57,91,898/- had been claimed during the year and formed part of the figure of total depreciation claimed of Rs.15,24,17,363/-. The Ld. AR relied upon the decision of the Hon'ble Madras High Court in case of Brakes India Pvt. Ltd. vs. DCIT (T.C.A. No. 551 of 2013 order dated 14.03.2017) and CIT vs. M/s Aztec Auto Pvt. Ltd. (T.C.A. No. 267 of 2020 order dated 07.09.2020). As regards Ground No. 3 & 4, the Ld. AR submitted that the same are not pressed.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that this issue is already considered by the

Hon'ble Madras High Court in case of Brakes India Pvt. Ltd. (supra) and M/s Aztec Auto Pvt. Ltd. (supra) and further the additional depreciation claimed was already imbibed in Section 32(1) (iia) of the Act. The Hon'ble Madras High Court in case of Brakes India Pvt. Ltd. held as under:

8. Pertinently, the Karnataka High Court, in a decision rendered in the case of CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has interpreted the aforesaid provision, in particular, the proviso incorporated therein. The Karnataka High Court, in the said case, has come to the conclusion that additional depreciation granted under clause (iia) of Section 32(1) of the Act is for the purpose of affording benefits to the Assessee and, to encourage industrialization, either by setting up a new industrial unit, or, by expanding a new industrial unit, by purchasing and installing a new machinery, or, plant, and putting the same to use for the purposes of business.

8.1. The Court, went on to say, that while, the proviso appearing in Section 32(1) restricts the claim of depreciation to 50% of the amount calculated at the percentage prescribed for an asset referred to in clause (iia), nowhere does it restrict allowance of the balance 50% of the additional depreciation, which in percentage terms, would be 10% in the succeeding A.Y.

8.2. The relevant observations made by the Division Bench of the Karnataka High Court in the case of CIT V. Rittal India (P.) Ltd., as contained in paragraphs 7, 8 and 9 of the said judgment, for the sake of convenience are extracted hereafter :

"..... 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, or that it should be claimed in one year, have been done away by substituting clause (iia) with effect from 01.04.2006. 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, if 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 in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed....."

9. We are in respectful agreement with the view taken by the Division Bench of the Karnataka High Court, passed in CIT V. Rittal India (P.) Ltd.

10. According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.

10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.

10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

Thus, the additional depreciation is allowable depreciation and the amendment is not applicable in present assessment year i.e. A.Y. 2014-15 in assessee's case. Further, no distinguishing facts were presented before us by the Ld. DR. Therefore, Ground Nos. 1 and 2 are allowed. As regards Ground No. 3 and 4, the same are not pressed, hence dismissed. The appeal of the assessee is partly allowed.

8. In result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court in presence of both the parties on this 11th Day of November, 2021

sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER

sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 11 /11/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI