

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 2333/DEL/2015 (A.Y 2008-09)

(THROUGH VIDEO CONFERENCING)

DCIT Circle-23(2) C. R. Building New Delhi (APPELLANT)	Vs	Sir Shadilal Enterprises Ltd. 4-A, Hansalaya, 15, Barakhamba Road, New Delhi AAECS36336D (RESPONDENT)
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I.T.A. No. 1538/DEL/2015 (A.Y 2008-09)

Sir Shadilal Enterprises Ltd. 4-A, Hansalaya, 15, Barakhamba Road, New Delhi AAECS36336D (APPELLANT)	Vs	DCIT Circle-23(2) C. R. Building New Delhi (RESPONDENT)
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Appellant by	Ms. Sunita Singh, CIT DR
Respondent by	Sh. G. N. Gupta, Adv

Date of Hearing	04.10.2021
Date of Pronouncement	22.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the orders dated 15/01/2015 passed by CIT (A)-1, New Delhi for assessment year 2008-09.

2. The grounds of appeal are as under:-

I.T.A. No. 2333/DEL/2015 (A.Y 2008-09)

1. " The Ld. CIT (A) has erred in law and on facts in restricting the disallowance made by the AO on account of 'provision of expenses' to Rs. 18.64 crores as against Rs. 20,59.20,430/- made by the AO while making the assessment."
2. " The Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 1,59,08,429/- made by the AO u/s 43B of the I.T. Act on account of interest on levy of sugar price for the season 1982-83."
3. " The Ld. CIT (A) has erred in law and on facts in allowing the depreciation on boilers (a 80% rather than the allowed depreciation @ 15% by AO while making assessment."

I.T.A. No. 1538/DEL/2015 (A.Y 2008-09)

1 That on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals)-I, New Delhi (hereinafter called CIT(A) for short) erred in upholding the action of the Assessing Officer in curtailing the original cost of the factory buildings in Unn Sugar unit to Rs. 6,62,31,999-00 as against Rs. 13,85,44,737-00 claimed by the appellant.

2 That on the facts and in the circumstances of the case, while adjudicating upon our Ground of Appeal No. 3 which reads as under:-

"DISALLOWANCE OF DEPRECIATION - Rs. 8,44,41,739/- (CLAIMED BY APPELLANT IN RETURN- Rs. 27,77,74,537/- ALLOWD BY AO- Rs. 19,33,32,798)

3.1 Because learned AO erred on facts and in law by reducing Normal Depreciation as well as Additional Depreciation by restricting the depreciation allowance to Rs. 19,33,32,748/- as against Rs. 27,77,74,537/- claimed by the appellant in the return of income.

3.2 Because learned AO erred on facts and in law by refusing to accept the claim for Additional Depreciation on certain items of fixed assets used in the units of the company as per provisions of Section 32(l)(iia) of the Income Tax Act", is concerned the learned CIT(A) has

i. failed to adjudicate on the appellant's submissions that the allowability of depreciation at 5% on the cost of alleged residential buildings by the AO is not correct since all the buildings are factory buildings as contradistinguished from residential buildings, and

ii has also failed to adjudicate upon the appellant's submissions that the appellant is entitled to 100% depreciation on Effluent Treatment Plant (ETP) valued at Rs. 27,38,162/- instead of depreciation @ 15% allowed by the AO.

That on the facts and in the circumstances of the case, as far as Ground of Appeal no. 5 which reads as:-

"ADDITION OF DHARMADA RECEIPTS RS. 12,14,932/- AND INTEREST EARNED ON ACCUMULATED DHARMADA FUNDS LYING IN BANK- Rs. 5,34,843/- -TOTAL ADDITION Rs. 17,49,775/-

Because learned AO has erred on facts and in law in making addition of Dharmamda receipts and interest earned on accumulated Dharmada funds lying credited in a separate bank account aggregating Rs. 17,49,775/- to the income shown by the appellant in the return" is concerned, the learned CIT(A) has erred in not accepting the declaration filed u/s 158A(1) of the Income Tax Act, 1961 in Form No.8 and further in deciding the aforesaid ground of appeal against the appellant.

I.T.A. No. 1538/DEL/2015 (A.Y 2008-09) (fresh grounds of appeal)

1. That on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals)-I, New Delhi (hereinafter called CIT(A) for short) erred in upholding the action of the Assessing Officer in curtailing the original cost of the factory buildings in Unn Sugar unit to Rs. 6,62,31,999/- as against Rs. 13,85,44,737/- claimed by the appellant.

2. That on the facts and in the circumstances of the case, the learned CIT(A) has failed to adjudicate - on the appellant's claim that the AO erred in granting depreciation at 5% only on the original cost of Rs. 1,29,79,278/- of 'alleged residential building of Unn Sugar Unit' as the 'alleged residential buildings' were actually factory buildings.

2.1 *That on the facts and in the circumstances of the case, the learned CIT(A) has failed to adjudicate on the appellant's claim that it was entitled to 100% depreciation on Effluent Treatment Plant (ETP), valued at Rs. 27,38,162/- instead of depreciation @15% allowed by the Assessing Officer .*

2.2 *That on the facts and in the circumstances of the case, the learned CIT(A) has erred in holding that appellant was not entitled to additional depreciation u/s 32(l)(iia) of the Income Tax, 1961 (Act for short) in respect of assets entitled to 100% depreciation.*

3. *On the facts and in the circumstances of the case, the learned CIT(A) erred in not accepting the declaration filed u/s 158A(1) of the Act in Form No. 8 in respect of additions of Rs. 12,14,932/- and Rs. 5,34,843/- being Dharmada receipts and interest earned on accumulated Dharmada funds respectively.*

Additional grounds of appeal

“1. On The facts and circumstances of the case, Ld.CIT(A) ought to have restricted the claim of depreciation @5%in respect of the assessee premises used for residential purpose by assessee.”

3. The assessee company is engaged in the business of manufacturing and sale of crystal sugar and Alcoholic products in its two sugar units (Shamly and Unn) and two distillery units (Shamly and Pilkhani). The Assessing Officer observed that the assessee had made provision for expenses of Rs. 20,78,25,963/- in the Financial Year 2007-08 as compare to Rs. 31,56,731/- during the Financial Year 2006-07. Therefore, the Assessing Officer asked the assessee to justify its claim of provision of expenses of Rs. 20,78,25,963/- and to explain why the same should not be treated as contingent liability. The return of income for the Assessment Year 2008-09 was filed on 29/9/2008 declaring total loss at Rs. 57,06,38,617/-. The assessee filed revised return of income u/s 139(5) of the Income Tax Act on 6/10/2008 declaring total loss at Rs. 56,59,50,142/-. The Assessing Officer made addition of Rs. 20,59,20,430/- towards provisions of expenses and disallowed the same. The

Assessing Officer also made addition of Rs. 13,31,638/- on account of interest payable on SDF term loan but which was not paid u/s 43B of the Income Tax Act. The Assessing Office made addition of Rs.17,49,775/- and treated the same as its trading receipts. The Assessing Officer also made addition of Rs. 4,90,562/- which was claimed by the assessee on account of hologram write off labels and packaging material. The Assessing Officer as per the Explanation 3 to Section 43 (1) of the Act took the value of the assets (land + Building+ Plant and machinery of the sugar unit at Block Unn district, Muzaffarnagar, U.P) Monet acquired by it on 22/09/2007 as per the Circle rate fixed by the Collector, Muzaffarnagar, vide order dated 18/09/2007 after allocating the stamp duty and allowed the depreciation to that extent only.

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

5. The Ld. AR submitted that as regards grounds of appeal 2.1, 2.2, 2.3, 3, the same are withdrawn as order under Section 154 of the Act was passed by the CIT(A) and the relief was granted. Therefore, in assessee's appeal, only Ground No. 1 is contested herein. The Ld. AR submitted that the CIT(A) erred in upholding action of the Assessing Officer in curtailing the original cost of the factory, buildings in Unn sugar units to Rs. 6,62,31,999/- as against Rs. 13,85,44,737/- claimed by the assessee. The Ld. AR submitted that the assessee acquired Unn Sugar Complex from M/s Monnet Sugar Ltd. on 24/09/2007 for a total consideration of Rs. 100,30,95,080/- including stamp duty in terms of conveyance deed date 22nd September, 2007. The assessee had acquired fixed assets like pre-hold land, lease hold land, buildings plants and machinery, furniture and fixture, office equipment, computers and vehicles. For a determination of cost of each assets including free hold land was valued as per circle rate prescribed by the UP Government, building and plant and machinery were valued as per report submitted by a registered valuer and furniture and fixture as well as other office items were valued at

their respective written down value. Since, the valuation of lease hold land as per market value prescribed by the UP Government was substantially lower than the value assigned by stamp authorities the remaining value of consideration was allocated to lease hold land. The Ld. AR further submitted that a reconciliation of figures relating to valuation of assets of Unn Sugar Unit was submitted to Assessing Officer during assessment proceedings. The Assessing Officer did not agree with the basis on which the same was given. It was further pointed out that fixed assets had been valued by the assessee and alleged that the assessee had inflated the values assign to fix assets in such a way that it could claim higher depreciation on certain fixed assets. The Ld. AR submitted that the Assessing Officer invoked the provisions of Explanation 3 to section 43(1) of the Act as the Assessing Officer was satisfied that the main purpose of transfer of such assets was for reducing the tax liability by the assessee by claiming depreciation with reference to enhanced cost. The Assessing Officer mentioned in the assessment order that the Assessing Officer obtained the approval of Additional Commissioner of Income Tax, Central Range (vi), New Delhi before invoking the said provision and re-computation of value of fixed assets. Thus, the Ld. AR submitted that the addition is not warranted and the same may be deleted.

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 to be noted that the assessee has paid Rs. 100,30,95,080/- while acquiring the sugar complex from M/s Monnet Sugar Ltd. The assets were acquired consisting of freehold land, leasehold land, building, plant and machinery, furniture and fixtures, office equipment, computers and vehicles. The submissions of the Ld. AR that for determination of cost of each asset separately, freehold land was valued as per circle rate prescribed by the UP Government, while the building and plant as well as machinery were valued as per report submitted by registered-valuer. The furniture & fixture as well as

other office item were valued at their respective written down value. But from the records, it can be seen that the leasehold land valued as per market value prescribed by UP Government was substantially lower than the value assigned by stamp authority. There is no basis for adopting this value. The CIT(A) has categorically observed that the assessee adopted this value as balancing figure by allocating higher value to building. The total sale consideration as per the sale deed and as recorded in the books of accounts of the assessee are appears to be similar. The assessee allocated higher value to building and lower value to leasehold land. But there is no justification for the same given by the assessee. The CIT(A) has given a detailed finding and there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 1 of the assessee's appeal is dismissed. As regards Ground Nos. 2.1, 2.2, 2.3, and 3 the same are withdrawn by the assessee. Hence, Ground Nos. 2.1, 2.2, 2.3, and 3 are dismissed.

8. As regards Revenue's appeal, the Ld. DR relied upon the assessment order and submitted that the CIT(A) erred in law and facts in restricting the disallowance made by the Assessing Officer on account of provision of expenses to Rs. 18.64 crores as against Rs. 20,59,20,430/- made by the Assessing Officer while making the assessment. The Ld. DR further submitted that the CIT(A) also erred in deleting, the addition of RS. 1,59,08,429/- made by the Assessing Officer u/s 43B of the Income Tax Act on account of interest on levy of sugar price for the season 1082-83. The Ld. DR further submitted that the CIT(A) allowing the depreciation on boiler 80% rather than the allowed depreciation at 15% by the Assessing Officer while making assessment order. The Ld. DR further submitted that the CIT(A) ought to have restricted the claim of depreciation at 5% in respect of the premises used for residential purpose by the assessee.

9. The Ld. AR relied upon the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 1 of the Revenue's appeal, it is seen that the assessee has paid State Advised Price (SAP) of Rs. 18.64 crores as per the Court order. The CIT(A) has rightly held that the same has to be allowed as a deduction during the assessment year under consideration. Therefore, the CIT(A) rightly directed the AO to verify whether this amount has been claimed during the assessment year 2013-14 and if not AO was directed to allow its deduction in the present assessment year. There is no need to interfere with the findings of the CIT(A). Ground No. 1 of Revenue's appeal is dismissed. As regards Ground No. 2, it is pertinent to note that since the Supreme Court order came in 2012, the claim is admissible in the Assessment Year under consideration as the same was a liability in A.Y. 2008-09. Therefore, there is no need to interfere with the findings of the CIT(A). Ground No. 2 of Revenue's appeal is dismissed. As regards Ground No. 3 and additional grounds, the CIT(A) has given categorical finding based on the evidences produced before the CIT(A) as well as Assessing Officer. Ground No. 3 and additional ground are dismissed. Therefore, there is no need to interfere with the same. The appeal of the Revenue is dismissed.

8. In result, the appeal of the assessee and the Revenue are dismissed.

Order pronounced in the Open Court in presence of both the parties on this 22nd Day of November, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 22/11/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI