

**IN THE INCOME TAX APPELLATE TRIBUNAL "C"**  
**(Virtual Court Hearing) BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.2109/Kol/2019**  
Assessment Year: 2015-16

**DCIT, Circle-6(1), Kolkata.....Appellant**

vs.

**M/s National Engineering Industrial Ltd.....Respondent**

**11<sup>th</sup> Floor, Birla Building,  
9/1, R.N. Mukherjee Road,  
BBD Bagh, Kolkata-1.  
[PAN: AAACN9969L]**

**Appearances by:**

Shri Akkal Dudhwewala, FCA & Shri Rakesh Jhunjhunwala, AR appeared on behalf of the appellant.

Shri Amitava Bhattacharya, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 13, 2021

Date of pronouncing the order : December 16, 2021

**Hearing through Video Conferencing**

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the Revenue against the order dated 17.06.2019 of the Commissioner of Income Tax (Appeals)-2, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 143(3) of the Income Tax Act (hereinafter referred to as the 'Act'). The Revenue in this appeal has taken the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in allowing the claim of balance additional depreciation on the assets which were put to use in earlier year.*

*2. That the appellant craves for leave to add to delete, modify any of the grounds of appeal before or at the time of hearing.."*

2. At the outset, it is noticed that the appeal filed by the Revenue is time-barred by 18 days. A separate application for condonation of the said delay has been filed, wherein reasons for the delay in filing this appeal have been mentioned. Considering the above reasons, we condone the delay.

3. The brief facts relevant to the issue are that the assessee is engaged in manufacturing of ball bearing and rubber products. The assessee acquired and installed certain plant and machinery during the financial year 2013-14 relevant to the assessment year 2014-15. As per the provisions of section 32(1)(iia) of the Act, the assessee was entitled to additional depreciation @ 20% of the actual cost of machinery. However, since the machinery was used for less than 180 days during the financial year under consideration, therefore the assessee in view of the 2<sup>nd</sup> Proviso to section 32(1), claimed depreciation @50% of additional depreciation i.e. @10% instead of 20% of the actual cost. The assessee claimed the remaining 10% additional depreciation during the next financial year i.e. F.Y 2014-15 relevant to A.Y 2015-16. However, the Assessing Officer disallowed the claim of balance additional depreciation of 10% stating that there was no provision under the Act as relevant to assessment year under consideration i.e. A.Y 2015-16 for allowance of balance depreciation in respect of machinery installed in the earlier assessment year upon which 50% of eligible additional depreciation was already allowed.

4. Being aggrieved by the above order of the Assessing Officer, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) allowed the claim of the assessee observing that the issue is clearly covered by the decision of the ITAT in the own case of the assessee for the Assessment Year 2013-14 vide ITA No.1791/Kol/2017 dated 28.12.2018. He further observed that the issue is otherwise also covered by the decision of the CIT(A)-2, Kolkata vide its order dated 17.01.2019 in assessee's own case for assessment year 2014-15 vide Appeal No.10329/CIT(A)-2/17-18. He therefore allowed the balance additional depreciation on plant and machinery claimed by the assessee in the assessment year under consideration.

5. Being aggrieved by the above action of the CIT(A), the Revenue has come in appeal before us.

At the outset, the Ld. counsel for the assessee has invited our attention to the decision of the Tribunal in the own case of the assessee for assessment year 2013-14 in ITA

No.1791/Kol/2017, wherein, the Tribunal vide order dated 28.12.2018 has decided the issue in favour of the assessee by observing as under:

*"7. Ground No. 3 of the revenue is against the action of the Ld. CIT(A) in allowing the claim of balance additional depreciation amounting to Rs. 6,36,83,752/- on the assets which were put to use in the earlier financial year.*

*8. The brief facts of the case is that the AO noted that the assessee has claimed Rs. 6,36,83,752/- on account of balance additional depreciation @ 10% on the assets which were purchased and put to use on the latter half of A.Y. 2012-13. The AO noted that the issue relates to the allowability of balance additional depreciation in the subsequent assessment year on the assets which were put to use for less than 180 days for the financial year relating to preceding assessment year. After hearing the assessee on the issue, the AO was of the opinion that there was no provision in the Act for claiming in the subsequent financial year the balance 50% of additional depreciation, when the assessee had claimed initial 50% of additional depreciation in the year of purchase of asset as it is used for less than 180 days in terms of proviso to [section 32\(1\)](#) of the Act. The AO also noted that though later on amendment has come, it only comes to effect in the [Finance Act, 2015](#) with effect from 01.04.2016 and noting that it is not a retrospective enactment, he disallowed the claim of the assessee. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who was pleased to give the relief to the assessee by holding as under:*

*"After carefully considering the factual and legal matrix, I find myself in agreement with the appellant that the balance 10% additional depreciation has to be allowed in the next year. I also note that the Act has been amended vide [Finance Act, 2015](#), as also that the [Finance Act, 2015](#) has been brought in to enhance investments and hence the amendment is in the nature of a welfare measure. Moreover, it is also noted that there are three jurisdictional Hon'ble ITAT decisions in favour of the appellant namely:*

*a. [Birla Corporation Ltd. vs DCIT](#) (2015) 69 SOT 217 (Kolkata ITAT) b. [Century Enka Ltd. vs DCIT](#) (2015) 37 ITR (Trib) 644 (Kolkata ITAT) c. [Universal Cables Ltd. vs DCIT](#) (2015) 57 taxmann.com 95 (Kolkata ITAT) Thus, following the aforesaid decisions, the said ground of appeal is allowed and decided in favour of the appellant. The Ld. AO is directed to allow additional depreciation of Rs. 6,36,83,752/-. However, as a consequence of allowing the said additional depreciation, the closing WDV of plant & machinery as reported by the Appellant / Tax Auditor after deduction of additional depreciation will be carried forward."*

*9. Aggrieved the revenue before us. We have heard both the parties and also perused the relevant material available on record. The learned Senior Counsel for the assessee brought to our notice that this issue is no longer res integra and the Hon'ble Karnataka High Court in [CIT vs Rittal \(India\) Ltd.](#) 388 ITR 423 has adjudicated similar issue wherein Hon'ble High Court held as under:*

"This appeal has been filed by the Revenue challenging the order of the Tribunal whereby full benefit of [Section 32\(1\)\(iia\)](#) of the Income Tax Act, 1961 (for short 'Act') has been given to the assessee.

2. The undisputed facts of this case are that the respondent-assessee was an existing industrial undertaking, when it had acquired and installed new plant and machinery in the financial year 2006-07 and claimed 50% of additional 20% depreciation (i.e. 10% additional depreciation) under [Section 32\(1\)\(iia\)](#) of the Act in the corresponding assessment year 2007-08. This was so claimed because admittedly the new machinery was acquired after 01.10.2006 and before 31.03.2007, meaning thereby that it was put to use for the purpose of business for a period of less than 180 days. There is also no dispute with regard to the fact that under [Section 32\(1\)\(iia\)](#), read with second proviso to 32(1)(ii) of the Act, for the assessment year 2007-08, the respondent- assessee could have been, and was granted benefit of 50% of the 20% of the amount of depreciation allowable under sub-section (ii) of [Section 32\(1\)](#) of the Act.

3. The dispute in the present appeal is with regard to the allowance of the balance 10% depreciation in the next assessment year 2008-09, so that the benefit of the total 20% allowable depreciation under [Section 32\(1\)\(iia\)](#) of the Act was given. The Assessing Officer, as well as the Appellate Commissioner, disallowed the claim of the assessee, whereas the Tribunal, vide its order dated 28.01.2014, has allowed the appeal of the assessee. Challenging the same, this further appeal has been filed by the Revenue.

4. We have heard Sri K.V. Aravind, learned counsel for the appellants as well as Sri T. Suryanarayana, learned counsel appearing for the respondent-assessee and perused the record.

5. This appeal has been filed raising the following two substantial question of law: 'i. Whether the Tribunal is correct in extending the benefit of [Section 32\(1\)\(iia\)](#) of the Act to the next assessment year when the income tax Act does not provide for such carryover, thereby violating the legal principles of "cassus omissus" which states that the courts cannot compensate for what the legislature has omitted to enact?

ii. Whether the Tribunal was correct in holding that additional depreciation allowed u/s.32(1)(iia) is a one time benefit to encourage industrialization and the relevant provisions has been construed reasonably and purposive without appreciating that the additional depreciation is allowed in the year of purchase and if in the year of purchase the assessee is eligible only for 50% depreciation, the balance 50% cannot be carried forward for the subsequent year on the claim cannot be allowed in any other year?'

6. The relevant provisions of [Section 32](#) are reproduced below: "[Section 32](#). (1) In respect of depreciation of--

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or

*after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed--*

*(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed ;*

*(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed :*

*Provided . . . . .*

*(a) . . . . .*

*(b) . . . . .*

*Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:*

*Provided also. . . . .*

*Provided also. . . . .*

*Provided also. . . . .*

*Provided also. . . . .*

*Explanation 1. . . . .*

*Explanation 2. . . . .*

*Explanation 3. . . . .*

*Explanation 4. . . . .*

*Explanation 5. . . . .*

*(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).*

*Provided. ...."*

*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, 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 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.*

*10. It 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 the 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."*

6. The Ld. DR could not point out any decision laying down any contrary proposition of law in this respect. However, he placed reliance upon Explanatory Notes to the Provisions of Finance Act, 2015 issued by the Central Board of Direct Taxes

(CBDT) and stated that section 32(1) has been amended vide Finance Act 2015 and a new Proviso has been added to section 32(1) w.e.f. 01.04.2016 providing that in case the plant and machinery is used for less than 180 days and 50% of additional depreciation has been allowed in that year, then the balance 50% of the additional depreciation shall be allowed in the immediately succeeding year. He has submitted that prior to insertion of the aforesaid Proviso w.e.f 01.04.2016, there was no provision in section 32(1) of the Act to allow the balance depreciation in the succeeding year. He has submitted that the aforesaid Proviso has been made applicable prospectively from assessment year 2016-17. He, therefore, has submitted that for the assessment year i.e. A.Y 2015-16, the benefit of aforesaid amended section 32(1) cannot be given to the assessee.

7. We do not find any force in the above contention of the Ld. DR. We find that the amended provision of section 32(1) has been thoroughly discussed by the Hon'ble Jurisdictional High Court in the case of CIT vs Rittal (India) Ltd. (supra), wherein, the Hon'ble High Court has observed that the language used in Clause (iia) of the said Section clearly provides that additional depreciation equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction. The Hon'ble High Court by discussing the aforesaid provision as reproduced above has held that if only 50% of the allowable depreciation i.e. sum equal to 10% of the actual cost of the plant and machinery is allowed because of the fact that the machinery is put to use for less than 180 days in that financial year, this would necessarily mean that the balance 10% additional depreciation can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated. The Hon'ble High Court has further observed that the beneficial legislation should be given liberal interpretation and that since the additional depreciation is a one-time benefit to encourage industrialization and therefore, the beneficial provision has to be construed reasonably, liberally and purposively to make it meaningful while granting additional allowance.

8. We further find that even in the Explanatory Notes to the Provisions of the Finance Act 2 issued by the CBDT, in Para 13.2 of the said Notes, it has been mentioned

that the aforesaid amendment of providing balance of additional depreciation in the immediately succeeding year has been brought to remove discrimination in the manner of allowing additional depreciation on plant or machinery used for less than 180 days in the preceding year. The very objective of insertion of a new proviso to section 32(1) is that to remove discrimination and therefore it can be safely said that the same is just a curative amendment. Even there is no provision u/s 32(1) prohibiting the balance additional depreciation in the succeeding year. In view of this, we do not find any merit in the above contention of the Ld. DR. The appeal of the Revenue is accordingly dismissed.

9. In the result, the appeal of the Revenue stands dismissed.

***Kolkata, the 16<sup>th</sup> December, 2021.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated:16.12.2021.

RS

*Copy of the order forwarded to:*

1. DCIT, Circle-6(1), Kolkata
2. M/s National Engineering Industrial Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches