

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.610/PUN/2018  
निर्धारण वर्ष / Assessment Year: 2012-13

ACIT, Circle-10, Pune.	Vs.	M/s. UMW Dongshin Motech Pvt. Ltd., Plot No.A-19, Talegaon Industrial Area, Village- Navalkhumbe, Pune- 410507. PAN : AACCD5858L
Appellant		Respondent

Revenue by : Shri Kalika Singh  
Assessee by : Shri Sanjay Mehta

Date of hearing : 14.01.2022  
Date of pronouncement : 14.01.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 6, Pune ['CIT(A)' for short] dated 06.12.2017 for the assessment year 2012-13.

2. The Revenue raised the following grounds of appeal :-

*"1. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in deleting the disallowance of interest u/s 36(1)(iii) when the assessee during assessment proceedings has failed to produce the proofs of the machinery put to use when the onus was on the assessee to prove that the borrowed capital was actually put to use and there is commencement of a business from the installed*

*machineries and asset as well as the working capital is also poured into the business ?*

*2. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not appreciating that the assessee has failed to justify through documentary evidences and supporting material the installation certificate or any other supportive documentary evidence inspite of sufficient opportunity granted by the A.O. during assessment proceedings ?*

*3. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in deleting the addition on account of depreciation and additional depreciation by not appreciating that the assessee has failed to produce proof of machinery put to use for business when the onus to prove that the borrowed capital was actually put to use and there is a commencement of business from the installed machineries and assets as well as the working capital is also poured into the business lies on the assessee?*

*4. The appellant craves leave to add, amend or alter any of the above grounds of appeal.”*

3. Briefly, the facts of the case are as under :

The respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of automobile and engineering components. The return of income for the assessment year 2012-13 was filed on 26.10.2012 declaring total income of Rs.Nil. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Circle-10, Pune (‘the Assessing Officer’) vide order dated 17.12.2014 passed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) at total income of Rs.Nil after setting of unabsorbed losses of earlier years. However, the Assessing Officer made disallowance of interest u/s 36(1)(iii) on the ground that the interest paid on loans borrowed for the purpose of

acquisition of fixed assets were not put to use. The Assessing Officer also disallowed the depreciation and additional depreciation on such assets. The Assessing Officer had come to conclusion that the assets were not put to use taking into consideration the following facts :

- (i) That the proof of machinery put to use for the business purposes was not furnished.
- (ii) That the assessee company made an advance of Rs.14,06,167/- to Kazu Company Ltd. towards testing and installation.
- (iii) The assessee company had worked at 20% of capacity only.

4. The Assessing Officer noticing that the appellant incurred interest expenditure of Rs.10,54,08,247/- disallowed the same placing reliance on the provisions of section 36(1)(iii) of the Act. Similarly, the Assessing Officer also denied the depreciation and the additional depreciation of 80% of the cost of the plant and machinery.

5. Being aggrieved by the above disallowances, an appeal was preferred before the ld. CIT(A), who vide impugned order deleted these disallowances agreeing with the submissions of the assessee

that the fixed assets purchased have been capitalized and the assets have been put to use.

6. Being aggrieved by the above decision of the Id. CIT(A), the Revenue is before us in the present appeal.

7. The Id. CIT-DR submitted that there is no evidence on record to show that the assets were put to use and, therefore, the Id. CIT(A) ought not to have allowed the interest on loans borrowed for the purpose of acquisition of fixed assets. Similarly, the Id. CIT(A) ought not to have granted the depreciation and the additional depreciation on the assets.

8. On the other hand, Id. AR submits that the assets were put to use and he has taken us through the Balance Sheet at page no.7 of the Paper Book to demonstrate that there is no outstanding capital in working progress as on 31.03.2012 which means that all the assets were put to use during the year under consideration. Thus, he submitted that the provisions of section 36(1)(iii) have no application, once the assets are put to use. Similarly, once the assets are put to use, the assessee is eligible for depreciation at prescribed rate. He further submits that the Assessing Officer had not given an opportunity of hearing to the respondent-assessee before making the disallowance of depreciation on such assets.

9. We heard the rival submissions and perused the material on record. The issue in the first ground of appeal relates to the disallowance of interest paid on loans acquired for the purpose of acquisition of assets. The Assessing Officer concluded that the assets were not put to use taking into consideration the fact that the assessee company had worked at only 20 – 25% of its capacity and the advance was paid to Kazu Company Ltd. towards installation and testing of machinery. The fact that the assessee company worked at 20% of its capacity does not imply that the assets are not put to use. It is settled position of law once the business is set-up and ready to commence the business, the assessee is entitled to claim depreciation on the assets. In the present case, the facts of the present case stand on better footing. It is an admitted fact that the assessee company had commenced operation, worked at 20% of its capacity which clearly denotes that the assets were put to use and the fact that there is no outstanding capital in working progress as on 31.03.2012 also goes to prove this fact. Thus, there is no evidence on record to say that the assets were not put to use. The mere fact that the assessee company had worked at 20% of the capacity does not imply that the assets were not put to use. In-fact, it clearly indicates that the assets were put to use and the assessee is

entitled to depreciation. In the light of the above factual position, the provisions of section 36(1)(iii) have no application and we do not find any illegality in the order of the Id. CIT(A). Thus, we do not find any merit in the first ground raised by the Revenue. Hence, the first ground of appeal stands dismissed.

10. The ground of appeal nos.2 and 3 challenges the deletion of addition of depreciation and the additional depreciation. In relation to the ground of appeal no.1, we have clearly held that the assets were put to use and, therefore, the assessee is entitled to claim the depreciation and the additional depreciation. Therefore, we do not find any error in the findings of the Id. CIT(A) allowing the depreciation and the additional depreciation. Thus, we do not find any merit in the ground of appeal nos.2 and 3 raised by the Revenue. Hence, these grounds of appeal nos.2 and 3 are dismissed.

11. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 14<sup>th</sup> day of January, 2022.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 14<sup>th</sup> January, 2022.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.