

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 5610/Del/2017 : Asstt. Year : 2013-14

Addl. CIT, Special Range-9, New Delhi	Vs	M/s The Fertilizer Corporation of India Ltd., PDIL Bhawan, A-14, Sector-1, Noida-201301 (U.P.)
(APPELLANT)		(RESPONDENT)
PAN No. AAACF1661P		

Assessee by : Sh. K. Sampath, Adv.

Revenue by : Sh. H. K. Chaudhary, CIT DR

Date of Hearing: 03.03.2022

Date of Pronouncement: 10.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-9, New Delhi dated 28.06.2017.

2. The assessee is 100% Government of India Undertakings under the Ministry of Chemicals & Fertilizers. As it was incurring continuous losses, it was ultimately referred to the Board for Industrial and Financial Restructuring (BIFR) due to erosion of its net worth. The GOI has decided to restructure the Corporation by inducting other PSUs such as SAIL, NTPC, RCF, etc. for its different plants. This being the state of affairs, the matter was taken up by the CCEA for further action. In the relevant assessment year, the assessee could not carry out its manufacturing activity and its plant and machinery remained

idle. Government of India has decided to close the operations of all the units of the appellant in 2002. However, GOI later decided, to revive the closed units of the assessee company (FCIL) & HFCL for setting up new plants leveraging the available assets and infrastructure in the closed fertilizer units, in order to bridge the demand-supply gap of urea in the country. In fact, it is observed from the annual report of the appellant that there was no production of urea at any of the plants during the year, due to the decision of the GOI for closure of the plants in 2002. Further there is no production in any of the units and activities restricted to security arrangement and settlement of dues of employees. Even the marketing offices were closed and there is no marketing activity.

3. The AO disallowed depreciation of Rs.3.12 crores on the grounds that no manufacturing activity was carried during the year. We find that the depreciation on the same items has been allowed in the earlier years. The main contention of the Assessing Officer was that the concerned assets were not put to use during the year. In the impugned order, it is observed that the reason for the disallowance is that no manufacturing was carried out during the year meaning thereby that the assets concerned were not put to use.

4. In this connection, the Id. AR of the assessee filed a copy of the order of the Id. CIT(A) dated 25.02.2016 in the assessee's own case for A.Y. 2005-06 wherein this issue was considered and the assessee's claim towards depreciation was allowed. The assessee has contended that under the concept of block of assets, individual assets lose their identity even though they are individually identifiable and hence the depreciation is

to be allowed on block of assets and not individual assets. The assessee has relied on the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Oswal Agro Mills Ltd. 341 ITR 467 (Del) as well as that of ITAT Mumbai in Swati Synthetics Ltd. vs. ITO (2010) 38 SOT 208.

5. The assessee has also submitted that in earlier year's appeals the company has been allowed depreciation.

6. We cannot subscribe to the view that, "though depreciation has been allowed in the earlier years on the plant & machinery which has been put to use and the depreciation cannot be allowed on the grounds that there was lull in the production activity". The purpose of depreciation is to compensate the diminishing value of the fixed assets which are meant for business purpose. The value of the asset invariably befall down from year to year due to wear & tear and the compensation was envisaged in the form of depreciation. Hence, linking the claim of depreciation to production in the midst of manufacture progression is against the legislative intent. Hence, we decline to interfere with the order of the Id. CIT(A).

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

Order Pronounced in the Open Court on 10/03/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 10/03/2022

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member