

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
DR. BRR KUMAR, ACCOUNTANT MEMBERR**

ITA No.5631/Del/2016
Assessment Year: 2012-13

SIAC SKH India Cab Manufacturing Pvt. Ltd., B- 5, Chirag Enclave, New Delhi-1100 48	Vs.	ACIT, Circle-23(2), New Delhi.
PAN :AANCS6375-E		
(Appellant)		(Respondent)

Appellant by	Shri Amar Jeet Singh, CA
Respondent by	Shri Umesh Takyar, Sr. DR

Date of hearing	10.03.2022
Date of pronouncement	17.03.2022

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 01.09.2016 of learned Commissioner of Income-Tax(Appeals)-17, New Delhi for the assessment year 2012-13. The only effective ground raised by assessee is as under:

- “1. That on the facts and circumstances of the case and in law, the learned Commissioner of Income-Tax(Appeals) has erred in law while confirming disallowance of 50% of depreciation of Rs.90,85,103 claimed by the appellant on factory & office building on the ground that the appellant

was not granted access to its premises and only a partial access/occupancy was allowed to the appellant by competent authority on 14.05.2014.”

2. Briefly, the facts are, assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 30.09.2012, declaring loss of Rs.12,70,67,656. In course of assessment proceedings, the assessing officer noticed that the assessee has claimed depreciation of Rs.90,85,103 on factory building and office premises. After calling for and examining the details, assessing officer observed that the competent authority has allowed occupancy of part of the premises in May, 2014. Further, assessee itself has shown that the commercial operation of the company had begun w.e.f. 01.11.2011. Being of the view that the assessee has not used the factory building and office premises for a period of more than six months, assessing officer restricted the depreciation to 50% of the amount claimed by the assessee and accordingly allowed an amount of Rs.45,42,551.

3. Assessee contested the part disallowance of depreciation before learned Commissioner (Appeals). However, agreeing with the assessing officer that the factory building and office premises was not

fully ready to be put to use, learned Commissioner (Appeals) confirmed the disallowance made by the assessing officer.

4. Before us, learned counsel for the assessee submitted that assessee has constructed the factory building and office premises on an area covering 25% of the land. Drawing our attention to the certificate issued by the Directorate of Town Planning and Country Planning, Haryana, a copy of which is at page 16 of the paper book, learned counsel for the assessee submitted, as on the date of issuance of occupancy certificate on 14.05.2014, the construction of factory building and office premises was complete. Therefore, there is no question of issuance of partial occupation certificate. He submitted, since the factory building and office premises was not put to use for business for a period exceeding six months during the year, the assessee itself has disallowed 50% out of the total amount of depreciation. Whereas, the assessing officer has again disallowed 50% resulting in double disallowance.

5. Learned Departmental Representative submitted, the assessing officer may be directed to examine assessee's claim and allow depreciation accordingly.

6. We have considered rival submissions and perused the material on record. On perusing the assessment order and the order of learned Commissioner (Appeals), we are of the opinion that both of them have not properly appreciated the factual position. From the occupation certificate dated 14.05.2014 issued by the Director of Town and Country Planning, it is evident that by May, 2014, the construction of factory building and office premises was complete and ready for occupation. Therefore, the observation of the assessing officer that the competent authority has issued a part occupation certificate is incorrect. Further, the departmental authorities have not correctly examined assessee's claim that it has disallowed 50% of the total amount of depreciation, since, the assets were used for less than six months. In case, the aforesaid claim of the assessee is correct, no further disallowance can be made out of the depreciation claimed by the assessee.

7. In view of the aforesaid, we direct the assessing officer to factually examine assessee's claim that it has claimed 50% of the total depreciation and accordingly allow assessee's claim of deduction. The

ground is allowed subject to factual verification by the assessing officer.

8. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 10th March, 2022

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 17th March, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	10.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	10.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	10.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	17.03.2022
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	17.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	