

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1632/Mds/2007  
निर्धारण वर्ष /Assessment Year: 2003 - 2004

The Assistant Commissioner of Income Tax, Company Circle – II(3), No.121, M.G. Road, Chennai – 600 034.  (अपीलार्थी/Appellant)	M/s. Indwel Linings Private Limited, Vs. No.F/20, Second Main Road, Anna Nagar, Chennai – 600 102. <b>PAN : AAACI 2632M</b> (प्रत्यर्थी/Respondent)
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Department by	: Mr. ARV. Sreenivasan, Addl. CIT
Assessee by	: Mr. CKN. Ravishankar Prabhu, Advocate

सुनवाई की तारीख/Date of Hearing	: 13.04.2022
घोषणा की तारीख/Date of Pronouncement	: 11.05.2022

**आदेश /ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-III, Chennai in I.T.A. No.352/2006-07/A.III, dated 27.03.2007. The assessment was framed by the Assistant Commissioner of Income Tax, Company Circle – II(3), Chennai for the Assessment Year 2003 – 2004, u/s.143(3) of the Income Tax Act, 1961, (hereinafter 'the Act') vide order dated 30.03.2006.

2. At the outset, it is noticed that the matter had travelled up to the Hon'ble Madras High Court in Tax Case (Appeal) No.1905 of 2008 and M.P. No.1 of 2008 dated 13.12.2021 and the matter remanded back to the file of the Tribunal vide paragraph Nos.9 and 10, as under:

*"9. The Tribunal while rejecting the claim of the Appellant for deduction under section 80IA(4), has not examined the claim of depreciation at 100% in terms of Section 32, Read with Entry 7 Rule 5 to Appendix. In view of the same, whether the Appellant is entitled to depreciation at 100% as claimed by them, needs examination. Therefore, it is prayed by the learned Counsel for the Appellant that the matter may be remitted back for considering the Appellant's claim for depreciation at 100% under section 32 of the Income Tax Act read with Entry 7 Rule 5 to Appendix I. The learned Counsel for the respondent also does not seriously object to the said prayer.*

*10. Considering the facts and circumstances of the case and having regard to the submissions made by the learned Counsel on either side, we are inclined to remit the matter back to the Tribunal for the limited purpose of examining the quantum of depreciation, which the Appellant is entitled to. The order impugned herein is set aside for that extent alone. Accordingly, the Tax Case Appeal is disposed of. Consequently, the connected miscellaneous petition is closed. No costs."*

3. Now, the only issue that arises to be adjudicated is that, what should be the rate of depreciation, the Assessee is entitled for? As directed by the Hon'ble Madras High Court, the matter was fixed for hearing and the learned Counsel for the Assessee, Mr. CKN. Ravishankar Prabhu, Advocate stated that the Commissioner of Income Tax (Appeals) has rightly allowed the depreciation by holding that the Assessee was engaged in the development of infrastructure facility, as contemplated u/s.80IA(4) of the Act and therefore the

plant and machinery under reference was used for development of the said project and therefore, it is eligible for depreciation at the rate of 100% as provided under Clause-(7) of Appendix - I of the Income Tax Rules, 1962.

4. We have heard both the sides and perused the directions of the Hon'ble Madras High Court. We noted that the CIT(A) in the Assessment Year 2002 - 2003 has held that the Assessee is entitled for the deduction u/s.80IA(4) of the Act, as the Assessee is being engaged in the development of infrastructure facilities as contemplated u/s.80IA(4) of the Act. On the query from the Bench, the learned Senior Departmental Representative stated that the order for the Assessment Year 2002 - 2003, that of the CIT(A), is become final and in this year also this aspect was not challenged before the Hon'ble High Court. It means that the accepted position in the order of the CIT(A) for the Assessment Year 2002 - 2003 is that the Assessee is engaged in the development of infrastructure facilities as contemplated u/s.80IA(4) of the Act and even in this year, this position has not been challenged, rather accepted by the Revenue and we are of the view that the CIT(A) has rightly allowed depreciation at the rate of 100%. We have noted that the CIT(A) has recorded these facts in paragraph nos.4.2 and 4.3, as under:

*"4.2. From the above provisions, it becomes clear that the only condition required for allowing depreciation @ 100% is that the relevant plant and machinery should have been acquired and installed after 1<sup>st</sup> day of September, 2002 and*

*it should have been used for the purpose of water supply project or for developing and maintaining an infrastructure facility referred in Clause (i) of Section 80IA(4) of the Act. The facts regarding the acquisition of plant and machinery after 01.09.2002 and its installation and use have not been disputed by the AO. The only contention of the AO is that the Appellant was merely a contractor for the construction of an infrastructure facility and the said machines were not installed in the infrastructure facility. As far as the first contention of the AO is concerned, I have held in the case of the Appellant itself in Appeal for the Assessment Year 2002 – 2003, relying on the decision of the Mumbai Tribunal in the case of Patel Engineering Limited reported in 94 ITD 411 (Mum.), that the Appellant is entitled to deduction u/s.80IA being engaged in the development of an infrastructure facility as contemplated u/s.80IA(4) of the Act. Therefore, I do not find any force in the first contention of the AO. Regarding the second contention of the AO, that the machinery is not installed in the infrastructure facility. I am of the view that the said contentions are not based on any evidence or reasoning. The AO has concluded the above argument without any corroborative evidence. The AO on the one hand accepts that the said machinery was utilized in the said project and on the other hand, contends that it was not installed in the infrastructure facility. This stand of the AO is found to be self-contradictory. No material has been brought on record by the AO to prove that the machinery under consideration had not been utilized for the purpose of the said water supply system undertaken by the Appellant as per the agreement with the Gujarat Water Supply & Sewerage Board. The Appellant has specifically contended that the plant and machinery purchased on 13.09.2002 and 16.09.2002 was acquired and used for the purpose of the said project only. The Appellant was required to do the technical work of insitu cement lining of the water supply pipes and to maintain the said infrastructure facility for two years. The said work cannot be done without the help of the specific plant and machinery. The AO has not brought on record any evidence to prove that the said machinery purchased by the Appellant had been used for some other purpose rather than for the development of the said project. Therefore, all the contentions raised by the AO on this issue is rejected.*

*4.3. Keeping in view the above discussion, it is hereby held that the Appellant was engaged in the development of an infrastructural facility as contemplated u/s.80IA(4) of the Act and therefore, the plant and machinery under reference used by the Appellant for the development of the said project is eligible for depreciation @ 100% as provided under clause (vii) of Appendix – I of the Income Tax Rules, 1962. In the result, the addition of Rs.17,79,338/- and Rs.6,82,500/- made by the AO on this issue is hereby deleted.”*

5. The Assessee is engaged in developing infrastructure facility as contemplated u/s.80IA(4) of the Act and the Assessee is eligible for depreciation in terms of Clause (vii) of Appendix – I of the Income Tax Rules, 1962 at the rate of 100%. Respectfully following the directions of the Hon'ble High Court, we dismiss the appeal of the Revenue.

6. In the result, the appeal of the Revenue in I.T.A No.:1632/Mds/2007 is dismissed.

Order pronounced in the court on 11<sup>th</sup> May, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11<sup>th</sup> May, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकर आयुक्त (ं पील)/CIT(A)  
4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF