

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH.YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.4601/Del/2011  
Assessment Year: 2008-09

<b>Kay Jay Fincap Limited C/o M/s. Wahi &amp; Co. K-I, Kailash Colony, New Delhi PAN No.AAACK0163H</b>	<b>Vs.</b>	<b>ACIT Circle – 5 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Anil Kumar Malhotra,CA
Respondent by	Sh. Anuj Garg, Sr. DR

Date of hearing:	20/06/2022
Date of Pronouncement:	20/06/2022

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal filed by the assessee is preferred against the order of the CIT(A)-8, New Delhi dated 12.09.2011 for A.Y. 2008-09.

2. The grievance of the assessee read as under :-

*The Hon'ble CIT(A) has erred in law and on facts in confirming, the following additions which is against the cannon of justice and facts of the case.*

**1) Grounds of Appeal No.1**

Disallowance of depreciation amounting to Rs.37.65.706/-

The Hon'ble CIT(A) has arbitrarily confirmed the disallowance of depreciation on the fixed assets made by the Ld. DCIT without analyzing the full facts of the case. The same is prayed to be deleted in full.

**2) Grounds of Appeal No.2**

Addition on account of Profit on sale of machinery as income amounting to Rs.32.32.293/-

The Hon'ble CIT(A) has arbitrarily confirmed the above addition made by the Ld. DCIT without analyzing the complete facts of the case. The profit on sale of assets of Rs.32,32,293/- is a notional entry appearing in the profit and loss account, which pertains to the difference between sale price and WDV as per Companies Act, i.e. depreciation is charged as per Companies Act. Whereas when we consider the WDV as per Income Tax Act, the profit on sale of assets would be a loss of Rs. 21,88,276/- .Accordingly, the same is prayed to be deleted in full.

**3) Grounds of Appeal No.3**

Disallowance of weighted deducted u/s. 35 (2AB) amounting to Rs.57,99,204/-

The Hon'ble CIT(A) has arbitrarily confirmed the above disallowance without fully analyzing the facts of the case. The same is prayed to be deleted in full.

3. The first ground relates to the disallowance of depreciation.
4. At the very outset, the counsel for the assessee stated that neither the AO nor CIT(A) have understood the facts in true perspective. It is the say of the counsel that the assessee has not transferred entire plant and machinery but some of the plant and machinery in the block were used by the assessee in its business, therefore, the depreciation has been disallowed on erroneous appreciation of facts.

5. The DR fairly stated that the issue may be restored to the files of the AO for fresh adjudication.

6. We have carefully considered the rival submissions, we find force in the contention of the counsel. It appears that both the AO and the CIT(A) has not understood the underlying facts in the issue in true perspective. Therefore, in the interest of justice we restore this issue to the files of the AO. The AO is directed to examine whether entire plant and machinery have been transferred by the assessee and the assessee is directed to substantiate its claim that some of the plant and machinery were still in use by the assessee in its alternative business. Ground No.1 is allowed for statistical purpose.

7. Ground No.2 relates to the addition on account of profit of sale of machinery. Once again the counsel vehemently stated that the AO and the CIT(A) have totally misunderstood the facts in making / confirming the addition of Rs.32,32,293/-. The Counsel stated that the assessee has claimed depreciation as per companies Act and the profit has been computed accordingly. It is the say of the Counsel that the AO without understanding and without examining the facts made the impugned addition.

8. The DR once again stated that the issue may be set aside to the files of the AO for fresh adjudication.

9. We have carefully considered the underlying facts in the issue. We find that neither the AO nor the CIT(A) has appreciated the underlying facts in the issue in true perspective. Therefore, in the interest of justice we restore this issue to the files of the AO. The AO is directed to examine the issue afresh and decide after proper appreciation of the facts. Ground No.2 is allowed for statistical purpose.

10. Ground No.3 relates to the disallowance of weighted deduction u/s. 35 (2AB) of the Act.

11. The basis of the disallowance is that the AO was of the opinion that during the period under consideration the assessee was not engaged in any activity of manufacture or production of eligible article.

12. Before us the Counsel for the assessee vehemently stated that the assessee was very much engaged in the eligible business activities which is evident from the audited statement of account and the audit report.

13. We have carefully perused the orders of the authorities below. In our considered opinion neither the AO nor the CIT(A) has gone into the merits of the facts and have simply formed a belief that the assessee was not doing any business. In the interest of justice we restore this issue to the files of the AO. The assessee is directed to demonstrate that R & D assets in the books of accounts were very much used by the assessee on which the weighted deduction u/s. 35 (2AB) of the Act has been claimed and the AO is directed to examine the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

14. In the result, the appeal by the assessee is allowed for statistical purpose.

The order is pronounced in the open court on 20.06.2022.

Sd/-  
**(YOGESH KUAMR US)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary

Date:-20.06.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	20.06.2022
Date on which the typed draft is placed before the dictating Member	20.06.2022
Date on which the typed draft is placed before the Other member	20.06.2022
Date on which the approved draft comes to the Sr.PS/PS	20.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	20.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	20.06.2022
Date on which the final order is uploaded on the website of ITAT	24.06.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	