

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.7248/Mum./2019**  
(Assessment Year : 2014-15)

**ITA No.7249/Mum./2019**  
(Assessment Year : 2015-16)

M/s. Actgen Pharma Pvt. Ltd.  
3045, 1<sup>st</sup> Floor Eaze Zone Mall  
Sundar Nagar, Malad (West)  
Mumbai 400 064 PAN – AAGCA8549K

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-12(1)(1), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Mehul Jain

Date of Hearing – 06.06.2022

Date of Order – 24/06/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee against separate orders dated 10/10/2019 and 16/10/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-20, Mumbai [*learned CIT(A)*], for the assessment year 2014-15 and 2015-16 respectively.

2. When these appeals were called for hearing, neither anyone appeared on behalf of the assessee nor filed any application seeking

adjournment. On a perusal of the record, we noticed that these appeals were listed on 7 previous occasions and no one appeared on behalf of the assessee despite service of notice. Therefore, we proceed to dispose off these appeals *ex-parte* qua the assessee, after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. Since both these appeals pertained to the same assessee and the issue involved is also common, therefore, these appeals were heard together and are being disposed off by way of this consolidated order. Further, as the basic facts in both the appeals are same, except with variance in figures, we have elaborately mentioned only the facts for the first assessment year (i.e. 2014-15) before us, for the sake of brevity

4. The only grievance of the assessee in both the appeals is against the disallowance of depreciation of plant and machinery claimed by the assessee.

5. The brief facts of the case pertaining to the issue as emanating from the record are: The assessee is engaged in the business of pharma business. For the assessment year 2014-15, the assessee e-filed its return of income on 30/11/2014, declaring total loss at Rs.7,61,59,740. During the year under consideration, the assessee had shown additions to fixed assets and claimed depreciation @ 15% against plant and machinery of Rs.3,46,25,880. During the assessment proceedings, the

assessee was asked to furnish details in support of its claim. The Assessing Officer after perusal of the details filed by the assessee noted that the assessee company had purchased stainless steel pipes and tubes, during the year under consideration, amounting to Rs.3,46,25,880 from one single party based at Jodhpur, Rajasthan. The Assessing Officer further noted that the delivery of these stainless steel pipes / tubes is made at assessee's plant at Surat, Gujarat. The Assessing Officer, vide order dated 27/12/2016 passed under section 143(3) of the Act, further observed as under:–

*"1. Assessee has purchased steel pipes and tubes from a party based in Rajasthan, a different state, while assessee's plant is based in Gujarat. Instead of buying products from same state, assessee preferred to buy products from a place at a distance of around 650 Km. Yet there are no delivery challans for delivery of the product*

*2. The products are all same, i.e. SS Pipes/Tubes. Assessee was asked to justify as to for purpose these were used. Assessee stated that old tubes were rusted and hence these new tubes were purchased. Hence, assessee was asked to give details of labor charges and other material used for fitting these pipes/tubes. Assessee stated that replacement of pipes was done by the internal staff only. It is surprising that such technical work could be done by the internal staff only.*

*3. Assessee has also stated that this replacement was necessary as assessee had applied for N. Visa audit from Brazil, which is like US FDA. If certified by such audit, assessee would have got good business. But then, assessee states that factory is under possession of bank and hence such applications and relevant documents cannot be produced. That is an convenient answer to avoid submitting any proofs. Obviously, assessee must have done the documentation through some professional and that person will always have a copy of such document. Also, assessee's head office is still working. He must have kept one copy at this office. However, if there is no such thing as N Visa audit and related application, this question doesn't arise.*

*4. Assessee has stated that the pipelines need replacement after 4-5 years. This period has also been calculated conveniently as assessee company was formed in F.Y. 2008-09 and the concerned year for purchase is F.Y. 2013-14, i.e, 5 years.*

5. *The current status of company is "under liquidation". Assessee itself has stated that the factory is under possession of bank. Thus this purchase of pipes was nothing but an attempt by directors of the company to siphon off the money of the bank as assessee knew future prospects of the company are not good and assessee might have to close down the factory."*

6. Accordingly, the Assessing Officer came to the conclusion that stainless pipes / tubes were never purchased by the assessee and the assessee took accommodation entry to siphon of black money. Further, in the absence of details as to when the said stainless steel pipes / tubes were put to use by the assessee, the Assessing Officer vide order passed under section 143(3) of the Act disallowed the claim of depreciation.

7. In appeal, the learned CIT(A) vide impugned order for the assessment year 2014-15, dismissed the appeal filed by the assessee observing as under:-

*"4.4.1 I have considered the rival contentions. The appellant has claimed that it had purchased SS pipes/tubes and replaced existing pipes in the factory. The appellant has added to the WDV of fixed assets a sum of Rs. 3,46,28,880/- which the appellant claimed was cost of the pipes/tubes. The AO has rejected the appellant's claim and held that no pipes/tubes had been actually purchased. I find that the appellant's claim is not acceptable for a number of reasons. The appellant could not produce the delivery challans to prove that the pipes/tubes were actually delivered in the appellant's factory. I also find that the appellant could not give any convincing explanation as to who had installed/fitted the pipe. The appellant's contention that the pipes/tubes were fitted/installed by its own internal staff which is totally unconvincing. I am unable to accept that internal staff looking after day to day repair and maintenance of the plant could have installed such huge quantity of pipes/tubes the cost of which is an staggering Rs.3.46 crore.*

*4.4.2 The appellant has claimed that the pipes and tubes were used for replacement which was carried out by its internal staff is not acceptable. In the return of income the appellant claimed the cost of the pipes and tubes as addition to its fixed assets. In doing so the appellant has, by implication, claimed that it had laid new pipelines.*

*The claim of laying of new pipelines is inbuilt in the claim that the pipes and tubes purchased represented addition to fixed assets. If the pipes and tubes purchased were actually used for replacement of old pipes, the appellant would have claim the cost of those pipes and tubes as expenses under current repairs. Therefore, the appellant submission is inconsistent with its return of income.*

*4.4.3 In the course of the appellate proceedings, the appellant was to furnish details of sale of scrap generated by the purported replacement of the pipes by the new pipes as claimed. In reply the appellant submitted as under:*

*"...*

*3. With regard to realisation or re-use of rusted or damaged pipes, we would like to state that those pipes are heavily damaged and strap of the same are non-usable and kept at the plant only. The value of the scrap is very meagre and the appellant has never shown any scrap during the previous year relevant to assessment year 2014-15.*

*Considering facts of the case, your honour will find that the asset is negligible value and the rusted pipes are kept with the appellant company only."*

*4.4.4 I have considered the contentions of the appellant. The appellant has stated that the scraps were kept with the appellant and were never sold. This is again very unconvincing. I find from "indiamart" that value of stainless steel pipe scrap is at least 20% of the cost of new pipes. As the appellant has stated, the pipes were used for carrying hazardous chemicals. Therefore, for safety considerations, such pipes have to be replaced when they are in fairly good condition to avoid the accident. For industries handling hazardous chemicals, it is not possible to wait till the conditions of the pipes deteriorate so much that leakages start. It was necessary for such industries to go for preventive maintenance Therefore, it can be presumed that the condition of the pipes replaced were fairly good from scrap value angle. Therefore the appellant's contention that the scrap was never sold and had little worth is not acceptable.*

*4.4.5 Further, the appellant could not explain how much other materials such as nuts, bolts, brackets, sockets consumed for fitting/installing the pipes/tubes were accounted for in its books though the AO had called for those details in the course of the assessment proceedings.*

*4.4.6 Taking all these facts into consideration, hold that the appellant's claim regarding purchase of pipes/tubes is not correct. Accordingly, confirm the disallowance of depreciation made by the AO."*

8. During the course of hearing, the learned D.R. vehemently relied upon the order of the lower authorities and explained the facts of the case.

9. We have considered the submissions of the learned D.R. and perused the material available on record. In view of the detailed finding of facts recorded by the learned CIT(A) and in the absence of any material to controvert the same, we find no reason to interfere with the impugned order passed by the learned CIT(A). Accordingly, the sole ground raised by the assessee in both the appeals is dismissed.

10. In the result, both the appeals by the assessee are dismissed.

Order pronounced in the open court on 24/06/2022

**Sd/-**  
**S. RIFAUR RAHMAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24/06/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai