

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.25/Coch/2014 : Asst.Year 2006-2007

M/s.Cherian Varkey Construction Co. Pvt. Ltd., 95 Panampilly Nagar Cochin 682 036. PAN : AANFA6210D	v.	The Deputy Commissioner of Income-tax, Circle 1 Ernakulam.
(Appellant)		(Respondent)

Appellant by : Smt.Parvathy Ammal, CA
Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 27.06.2022	Date of Pronouncement : 29.06.2022
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ORDER

Per George George K, JM :

The Hon'ble High Court of Kerala vide judgment dated 19.12.2013 in ITA No.15 of 2016, directed the Tribunal to adjudicate whether the assessee is entitled to additional depreciation as available u/s 32(1)(iia) of the I.T.Act on actual cost of vehicles and transit mixers. The Hon'ble High Court was considering three substantial questions of law. The first two substantial questions of law were answered in favour of the assessee and the third question of law was restored to the ITAT. The three substantial questions of law read as follows:-

- “(i) *Whether on the facts and circumstances of the case, the Honourable Tribunal and authorities below erred in holding that there is no “manufacture” in the production of Ready Mix Concrete when the RMC itself is an excisable commodity / goods on which credit is also available for inputs?*

- (ii) *Whether on the facts and circumstances of the case, the Honourable Tribunal and authorities below erred in holding that the appellant is not entitled for any additional depreciation under Section 32(1)(iia) for the machinery used for manufacturing Ready Mix Concrete?*
- (iii) *Whether on the facts and circumstances of the case, the Honourable Tribunal and authorities below erred in holding that the transmit mixers, Tata trucks and Ashok Leyland trucks are motor vehicles and the appellant is not entitled for any additional depreciation.?"*

2. The relevant finding of the Hon'ble High Court at para 24 reads as follows:-

"24. On the above reasoning, we answer the first question extracted herein above in favour of the assessee and against the Revenue finding that RMC is an article obtained as a result of manufacture. The second question is also answered in favour of the assessee and against the Revenue in so far as finding the assessee, though engaged principally in the business of construction, is entitled to additional depreciation under Section 32(1)(iia) for the plant and machinery used in the manufacturing activity being the production of RMC. We leave the question, whether the exemption itself is permissible on the actual cost of vehicles acquired by the assessee in the previous year, to be considered by the Tribunal. Whether the subject vehicles, in the nature of the process involved, qualify to be treated as plant and machinery will be decided by the Tribunal. The Income Tax Appeal is partly allowed and remanded for consideration of that specific question. The respective parties to suffer their costs."

3. The learned AR reiterated the submissions made before the Income Tax Authorities.

4. The learned Departmental Representative supported the findings of the AO and the CIT(A).

5. We have heard rival submissions and perused the material on record. The assessee had purchased the following assets:-

Sl. No.	Particulars of assets on which depreciation is claimed	Value	Depreciation	Additional depreciation
1.	Transit Mixers	65,62,774	8,20,346	6,56,277
2.	Truck	85,86,528	10,73,316	8,58,653
	Total	1,51,49,302	18,93,662	15,14,930
3.	Other plant and machineries			9,44,574
	Total			24,59,504

5.1 The sample copies of the invoices for the Transit Mixers and Truck Chassis are placed at page 37 to 45 of the paper book submitted by the assessee. Section 32(1)(ia) of the I.T.Act provides that any new machinery or plant is eligible for additional depreciation. The proviso to the said section provide that no deduction shall be allowed in respect of –

- (A)
- (B)
- (C) Any office appliances or road transport vehicle.
- (D)

Therefore, once it has been established that there is manufacture, the question to be decided is whether the assets on which additional depreciation has been claimed by the assessee is plant or machinery and do not fall under the purview of “road transport vehicle”. It is an admitted fact that the assessee had claimed additional depreciation on Transit

Mixer, Tata Trucks and Ashok Layland Trucks, on which Transit Mixers are mounted which are used for transport of RMC by road to the customers site. Hence the learned lower authorities were of the opinion that the vehicles fall within the definition of 'Road transport vehicle' and would not be eligible for additional depreciation. The process of manufacture of RMC as detailed by the AR, which was not controverted by the Revenue are as follows:-

"The aggregates, cement water and admixture are mixed in the automatic batching plant at RMC factory. 1 cubic meter of RMC is produced in one minute and the normal capacity of a transit mixer is 7 cubic meter of RMC. The vehicles are placed right below the batching plant and concrete is taken into the concrete mixture through a chute' The concrete mixing transport truck maintains the material's liquid state through agitation, or turning of the drum, until delivery.

The blades in the transit mixture is in a rotating mode and the RMC is directly pumped into the transit mixer through the chute and as in the plant the mixing is continued in the transit mixer to ensure homogeneous mixing of RMC' The process in the batching plant and in the transit mixer are identical and the mixing has to continue till it reaches the destination. The movement in the vehicle is not mere transportation but part of the manufacturing activity in so far as the process commences from blending of ingredients and ends with laying of the concrete in the premise of the customers'

The concrete mixing transport truck maintains the materials liquid state through agitation, or turning of the drum, until delivery' The interior of the drum on a concrete mixing truck is fitted with a spiral blade. In one rotational direction, the concrete is pushed deeper into the drum. This is the direction the drum is rotated while the concrete is being transported to the building site. This is known as "charging" the mixer. when the drum rotates in the other direction, the Archimedes' Archimedes' screw-type arrangement "discharges", or forces the concrete out of the drum.

The concrete will solidify if the rotation is stopped and in order to ensure. that the concrete does not set it is also essential to quantify the admixture based on the distance to be transported in the vehicle.

The RMC can be delivered to the premises of the customer only in transit mixers and in no other vehicle. Moreover, RMC cannot be Stocked in the premise and transported like cement, steel etc as per

the requirement of the customer. The transit mixer has to be necessarily be beneath the batching plant at the time of production. As such the batching plant, the chute and the transit mixers are an integrated system, thereby the transit mixers being “plant”.

5.2 From the above description of manufacture of RMC, it is clear that the transit mixes have to be fitted / mounted on the truck chassis for making the transit mixer fit for use for taking the ready mix concrete (RMC) available for use at site. The chain of activity cannot be broken or delinked, i.e., to say after the manufacture, the RMC cannot be handed over to the customer so that they can transport in their own vehicle. Specialized vehicles are required for transport and laying of the product also requires technical expertise, for which trained personnel of the assessee are employed. As such, the specialized vehicle is also an integral part of the manufacturing activity and therefore, rightly to be classified under “Plant and Machinery”. In assessee’s case also the Transit Mixer unit purchased by the assessee can be used only after it is mounted on a Chassis. Hence, it could be seen that the Transit Mixer and Chassis on which it is mounted are inseparable to the extent that the Transit Mixer unit will be of no use if stand alone. As such the preliminary and prime objective of using a chassis is to install the Transit Mixer which is used for maintaining the production process involved in making ready Mix concrete by making the composure of the Ready Mix concrete steady until it reaches the site. If as contended by the revenue the transit mixers are mere road transport vehicles, then the RMC could have been transported by any transport vehicle which is not possible. The function of the transit mixer

is not mere transport but is an essential part of the manufacturing process, and process starting with blending of ingredients and ending with laying the ready mix concrete. The transit mixer can be used only in respect of RMC and for no other purpose.

5.3 The Hon'ble Kerala High Court in the case of CIT v. Navodaya reported in 271 ITR 173 has applied the functional test as a decisive test to consider whether the category of building can be considered as "Plant" or not. In the said case, Studio building being specific and specially designed to enable shooting of a film with its various technological specialities was also held to be a "plant". The function which the asset performed was held to be decisive. Applying the ratio in the said decision also the Transit Mixer fulfils functional test, in so far as it is especially designed to ensure that the product viz. Readymix Concrete is made available to the end customer in its correct form. Without the Transit Mixer, production carried out at the RMC Plant would be rendered useless and cannot be made available at the site of the customer.

5.4 The section 2(47) of the Motor Vehicles Act, 1988 reads as follows:-

*"section 2
(47) "transit vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"*

5.5 The transit mixers used by the assessee are specially designed machinery fitted to a chassis for the purpose of carrying out the manufacturing work involved in making Ready Mix Concrete fit for use until it reaches the site. The Transit Mixers are not transport vehicle as defined in section 2(47) of the Motor Vehicles Act, 1988. The Hon'ble High Court of Gauhati in the case of CIT v. Deha Assam Tea Co. P. Ltd. (2000) 241 ITR 555, held as follows:-

“As a matter of fact the same point having once been raised in one of the income-tax references, a Division Bench of this Court in IT Ref. No.3 of 1997 CIT vs. Nandlal Parshuram (1999) 239 ITR 497 (Gau) by order dated 4th March, 1998, answered the question as referred in the case holding that a tractor would not be covered as road transport vehicle and would only be covered as motor vehicle under s.2(44) of the Motor Vehicles Act which defines the tractor. It would not be a transport vehicle under s. 2(47) of the Motor Vehicles Act. The investment allowance would be admissible for tractors under s.32A of the IT Act.”

5.6 Applying the ratio in above judgment the Transit Mixer would also not to be considered as Road Transport Vehicle.

5.7 On identical facts, the Ahmedabad Bench of the Tribunal had allowed additional depreciation on mixer mounted on vehicles as eligible u/s 32(1)(iia) of the I.T.Act. The relevant finding of the Ahmedabad Bench of the Tribunal reads as follows:-

“8.2 However, we find substantial force in the alternative claim raised by the assessee for allowability of additional depreciation on mixer mounted on the vehicle as eligible under s.32(1)(iia) of the Act. Section 32(1)(iia) of the Act provides for entitlement of additional depreciation in the case of new plant and machinery installed after specified date by an assessee engaged in the business of manufacturing or production of any article or thing. The transit mixer is stated to be mounted on the chassis to enable the RMC manufactured/produced at site to be kept in the wet form for its utilization at construction plant. Therefore, transit mixer mounted on the vehicle is nothing but a plant and machinery where ancillary

process is done as a continuation of manufacture/ production contemplated under s.32(1)(iia) of the Act. Therefore, we wholly agree with the alternative contention of the assessee for allowability of additional depreciation on mounted mixer on first principles. However, the cost of purchase of mixer during the year requires factual examination. Consequently, the issue is remitted back to the file of the AO for examining the factual aspect and for determination of additional depreciation on mounted mixer. Needless to say, the assessee shall provide factual details and documentary evidence to assert its claim of additional depreciation before AO. Ground No.2 is accordingly allowed for statistical purposes.”

5.8 In view of the aforesaid reasoning and judicial pronouncement, cited supra, principally we hold that the assessee is entitled to additional depreciation on cost of vehicles and transit mixers. However, since the A.O. and the CIT(A) has at the threshold held that there is no manufacture of RMC and truck on which transit mixer is mounted is a road transport vehicle, there was no factual verification of cost of purchase of transit mixture and trucks. Therefore, for the limited purpose of examination of the invoices for which additional depreciation is claimed, we restore the issue to the files of the A.O. It is ordered accordingly.

6. In the result, the appeals filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 29th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 29th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-II, Kochi.
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin