IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.409/Kol/2020
Assessment Year: 2010-11

M/s. Beeyu Overseas Ltd. **Ground Floor,** **15, Chittaranjan Avenue,** **Kolkata-700 072.** **(PAN: AABCB3327K)**	**Vs.**	**Deputy Commissioner of Income Tax,** **Circle-4, Kolkata.**
(Appellant)		**(Respondent)**

Present for:
Appellant by : Shri Miraj D. Shah, FCA
Respondent by : Shri Biswanath Das, Addl. CIT

Date of Hearing : 12.05.2022
Date of Pronouncement : 01.08.2022

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of ld. CIT(A)-20, Kolkata vide Order No. ITBA/APL/S/250/2019-20/1024653634(1) dated 04.02.2020 for A.Y. 2010-11 passed against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by DCIT, Circle-4, Kolkata dated 13.02.2013.

2. At the outset, we note that there is a delay of 51 days in filing the present appeal which was filed on 30.06.2020. From the perusal of the material placed on record, we note that the order passed by Ld. CIT(A) is dated 04.02.2020. Assessee claims to receive the said order on 11.03. 2020, as noted in Form 36 placed on record. Accordingly, the appeal ought to have been filed on or before 10.05.2020 which has been filed on 30.06.2020. The period of delay of 51 days falls within the lock-down owing to Covid-19 pandemic for which the Hon'ble Supreme Court has directed that the period from 15.03.2020 to 28.02.2022 is to be excluded for the

purpose of computing the limitation period during the COVID-19 pandemic. Further, a period of 90 days is allowed after 28.02.2022 vide same order. When the matter was confronted to Ld. Sr. DR, he did not raise any objection for condonation of the delay in filing the appeal. Considering the facts and circumstances of the case, we condone the delay in filing the appeal which pertains to the pandemic of COVID-19 and thus admit it for adjudication.

3. The solitary ground of appeal taken by the assessee relates to disallowance of depreciation allowance claimed by the assessee of Rs.1,34,95,087/- (erroneously printed as Rs.1,34,91,087/- in the assessment order).

4. Brief facts as culled out from the records are that assessee filed its return of income on 24.09.2010 reporting a loss of Rs.1,49,35,873/-. Assessee is in the business of cultivation and manufacturing of tea, agricultural products and trading of goods, commodities and agency services. In respect of claim of depreciation made by the assessee on plant, machinery and factory building, etc., Ld. AO noticed from the Director's report that assessee is not carrying out any tea manufacturing activity at its unit located at Ooty, Tamilnadu since August, 2008 as the Tea Board of India had revoked the factory's registration under the provisions of Tea (Marketing) Control Order, 2003. Ld. AO sought clarification from the assessee as to why the claim of depreciation should not be disallowed when the plant and machinery were not put to use. In explanation, assessee submitted that it had changed the business model from manufacturing of tea to trading in tea. However, there was no sale or manufacturing of tea during the year due to the circumstances beyond its control. It was also submitted by the assessee that these machineries were tested and maintained so that production could take place as and when desired. In this respect, Ld. AO before concluding on the disallowance, noted that machineries

might have been tested and maintained to keep it ready to dispose but not for resuming its manufacturing activity. Thus, Ld. AO declined to accept the submission of the assessee and disallowed the claim of depreciation made by the assessee. Aggrieved, assessee went in appeal before the Ld. CIT(A) before whom submissions were made on the following points:

"(i) *Assessee did not carry on the same business as in earlier year but it did carry on some other business and the AO has not denied this fact.*

(ii) Management's intention to sell plant and machinery never meant that the appellant company was not open to leasing out plant and machinery.

(iii) Assessee has shown loss under the head profit and gains of business and profession and AO had never disputed this fact.

(iv) Citing some case laws assessee says that it is not necessary that business carried out in the following previous year should be the same as it was carried on in the preceding years.

v) Assessee was never out of business for ever and there was a passive use of plant and machinery.

vi) Plant and machinery "includes all types of machinery including machinery installed at office of the appellant, as also vehicles used by appellant for its business."

vii) While allowing depreciation under the provisions of Income-tax Act, bifurcation of block of asset is not permitted under the Act.

viii) Depreciation cannot be disallowed for the entire block, bifurcating one item from the block on the ground that it is ineligible asset for claim of depreciation."

5. In the course of the first appellate stage, assessee also placed reliance on the decision of Coordinate Bench of ITAT, Mumbai in the case of *DCIT v. Boskalis Dreadging India Pvt. Ltd. 53 SOT 17 (Mum)* to assert that concept of *'block of asset'* has been brought on the statute effective from AY 1989-90 and, therefore, individual assets looses its

identity for the purpose of depreciation and importantly, the user test is to be satisfied at the time of purchase of machinery when it is put to use for making it part of block of asset for the first time. Reliance was also placed on the decision of Hon'ble High Court of Bombay in the case of *CIT Vs. Sonic Biochem Extractions Pvt. Ltd. in ITA No. 2088 of 2013* for the same contention. While deciding the appeal, ld. CIT(A) found favour with the assessee on the condition of ownership of assets by the assessee. However, on the condition regarding the use of assets for the purpose of business, he concluded taking an adverse view based on interpretations arising from various judicial fora. He, thus, upheld the action of the AO in disallowing the claim of depreciation made by the assessee by noting the correct amount of claim of Rs.1,34,95,087/- instead of Rs.1,34,91,087/-. Aggrieved, the assessee is in appeal before this Tribunal.

6. Before us Shri Miraj D. Shah, FCA represented the assessee and Shri Biswanath Das, Addl. CIT represented the department.

7. Ld. Counsel for the assessee reiterated the submissions made before the first appellate authority which are referred above and are not repeated hereunder. However, in the course of hearing before us, ld. Counsel placed strong reliance on the decision of the Coordinate bench of ITAT, Kolkata in the case of *Hindusthan Engineering & Industries Ltd. v. DCIT (2018) 90 taxman.com 230 dated 24.01.2018* which has elaborately dealt with the similar issue and held in favour of the assessee. Ld. Counsel pointed out that the Coordinate bench of ITAT, Kolkata found favour with the assessee after deliberating and considering the decisions of –

(i) Hon'ble High Court of Delhi in the case of Oswal Agro Mills Ltd. (2011) 341 ITR 467

(ii) Hon'ble High Court of Bombay in the case of Sonic Biochem Extractions Pvt. Ltd. (Supra) and

(iii) Hon'ble High Court of Gujarat in the case of Nirma Credit & Capital Ltd. (2017) 390 ITR 302.

7.1 Relevant extract from the said decision of *Hindusthan Engineering & Industries Ltd. Vs. DCIT (supra)* are reproduced hereunder for ready reference:

> *"18 Thus, in the present case before us for the assessment year i.e. 2012-13, the W.D.V. of any block of assets shall be the aggregate of the W.D.V of all the assets falling within that block of assets at the beginning of the previous year. From this, the adjustments have to be made for the increase or reduction in the block of assets during the year under consideration. The deduction from the block of assets has to be made in respect of any asset, sold discarded or demolished or destroyed during the previous year. As per amended Section 32, deduction is to be allowed – "In the case of any block of assets, such percentage on the written down value thereof as may be prescribed." Thus, the depreciation is allowed on block of assets, and the Revenue cannot segregate a particular asset there from on the ground that it was not put to use. With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the "block of assets" at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of "block of assets" has been introduced, which is relevant for calculating the depreciation. We take note of the Circular issued by the Revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No.469 dated 23.09.1986, wherein the rationale behind the aforesaid amendment is described as under:*
>
> > *"6.3 As mentioned by the Economic Administration Reform Commission (report No.12, Para 20),the existing system in this regard requires the calculation of depreciation in respect of each capital assets separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity if use, etc., the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1) (iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has*

introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in each of the year classes of assets, namely, buildings, machinery, plant and furniture."

19 From a reading of the aforesaid Circular it is clear that the legislature felt that keeping the details with regards to each and every depreciable asset was time consuming for both the assessee and the Assessing Officer. Therefore, the Parliament in its wisdom amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.

20 Along with the amendment as aforesaid, the Parliament in its wisdom has made another significant and contemporaneous amendment has been made, which need to be taken note. The Parliament has also deleted the provision for allowing terminal depreciation in respect of each assets, which was previously allowable under section 32(1) (iii) and also taxing of balancing charge under section 41(2) in the year of sale. In substitution of these two provisions, now whatever is the sale-proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assessee are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1) (iii). This amendment also strengthened the claim that now only details for "block of assets" has to be maintained and not separately for each asset. In CIT Vs.Oswal Agro Mills Ltd (2011) 341 ITR 467 (Del) wherein their Lordship Justice A.K.Sikri (his Lordship then was) has analysed the aforesaid law in detail and took into consideration the legislative intent which led to the aforesaid amendment. Therefore, his Lordship did not accept the submission of the Revenue "that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of "block of assets" Repelling this argument of Revenue, their Lordship in his own words held " Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular assets forming part of the "block of assets" even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short term capital gain, which would be exigible to tax and for this reason, we say that there is not loss to Revenue either."

21 It would be worthwhile to discuss the facts in CIT Vs. Oswal Agro Mills Ltd 341 ITR 467 (Del) in brief:-

"For the relevant assessment year the assessee claimed depreciation on its various assets which included the claim of depreciation in respect of a closed unit at Bhopal. The Assessing Officer asked the assessee to explain that on what basis it was claiming depreciation on that unit, which remained closed. In response the explanation of the assessee was that the depreciation was to be allowed as the assets of that unit remained part of the block of assets and were ready for passive use, which was as good as real use. The Assessing Officer, however, was not impressed with the explanation of the assessee and disallowed the depreciation on that unit. The Commissioner (Appeals) dismissed the assessee's appeal. On second appeal, the Tribunal allowed the assessee's claim on two grounds, viz (1) there was a passive user of the assets at Bhopal unit, which would be treated as `used for the purpose of business' and (2) as it was a case of depreciation on block of assets, the assets of Bhopal unit could not be segregated for the purpose of allowing depreciation and depreciation had to be allowed on entire block of assets".

The <u>Head Notes</u> in this case is as under:

The position concerning the manner in which the depreciation is to be allowed, has gone a sea change after the amendment of section 32 by the Taxation Laws (Amendment) Act, 1986. [Para 25]. As per amended section 32, deduction is to be allowed - `In the case of any block of assets at such percentage on the written down value thereof as maybe prescribed'. Thus, the depreciation is allowed on block of assets, and the revenue cannot segregate a particular asset there from on the ground that it was not put to use. [Para 29]. With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the `block of assets' at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of `block of assets' has been introduced, which is relevant for calculating the depreciation. It would be of benefit to take note of the circular issued by the revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No.469, dated 23-9-1086, wherein the rationale behind the aforesaid amendment is described [Para 30]. It becomes manifest from the reading of the aforesaid circular that the legislature felt that keeping the details with regard to each and every depreciable asset was time consuming both for the assessee and the Assessing Officer. Therefore, it amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of assets falling within the same class of assets [Para 31].

Another significant and contemporaneous development, which needs to be noticed, is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previously allowable under section 32(1)(iii) and also taxing of balancing charge under section 41(2) in he year of sale. Instead of these two provisions, now whatever is the sale proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assesses are not required to maintain particulars of each asset separately and in the absence of of such particular, it cannot be ascertained whether on sale of any asset, there is any profit liable to be taxed under section 41(2) or terminal losses allowable under section 32(1)(iii).This amendment also strengthens the claim that now only detail for 'block of assets' has to be maintained and not separately for each asset (para 32)."

22. So, we rely on the ratio decidendi of the decision rendered by the Hon'ble Delhi High Court in Oswal Agro Mills Ld (supra) where the assessee in that case claimed depreciation on its various assets which included the claim of depreciation in respect of a closed unit at Bhopal (non-used for six years) was disallowed by the AO, which was later allowed by the Tribunal on two grounds (i) there was a passive use of the assets at Bhopal unit, which would be treated as "used for the purpose of business" and (ii) as it was a case of depreciation on block of assets, the assets of Bhopal unit could not be segregated for the purpose of allowing depreciation and depreciation had to be allowed on entire block of assets. The Hon'ble High Court upheld the order of the Tribunal on the 2nd reason stated herein and as discussed above. However, the first reason of Tribunal that passive user of plant and machinery which theory in the facts and circumstances i.e. (six years non-user of unit and no sign of that unit becoming functional) did not find favour with the Hon'ble High Court, wherein their Lordship observed that the "Passive User", in those circumstances, could not be extended to absurd limits. In any case, the Hon'ble High Court upheld the order of Tribunal and accepted that though the assets of the Bhopal unit were not functional since being part of "Block of Assets" they cannot be segregated and depreciation has to be allowed

23 Also Bombay High Court in the case of CIT v. M/s Sonic Biochem Extractions (P) Ltd. ITA No. 2088/2013 dated 17.11.2015 while dismissing the appeal of revenue whereby depreciation was claimed in respect of plant and machinery of discontinued business which is not likely to be revived has held as under:

"c. On further appeal to the Tribunal the impugned order held that the refining machinery was a part of the block of assets of plant and machinery. In such a case depreciation is granted to the entire block of assets whether or not an individual item therein has been used during the subject assessment year. In support the impugned order placed reliance upon on its decision in the case of DCIT Vs. Boskalis

Dredging India (P) Ltd. 53 SOT 17 (Mum) wherein it has been held that once the concept of block of assets was brought into effect from assessment year 1989-90 onwards then the aggregate of written down value of all the assets in the block at the beginning of the previous year along with additions made to the assets in the subject Assessment Year depreciation is allowable. The individual asset looses its identity for purposes of depreciation and the user test is to be satisfied at the time the purchased Machinery becomes a part of the block of assets for the first time. In the circumstances the respondent's appeal was allowed and the disallowance of depreciation was deleted.

d. Mrs. Bharucha, learned Counsel for the revenue fairly states that the issue arising herein is identical to the issue which arose before the Tribunal in Boskalis Dredging India (supra) where also the dredger concerned was a part of the block of assets and not put to use. On instructions, she further states that the Revenue has accepted the decision of the Tribunal in Boskalis Dredging India (supra) which the impugned order has merely followed. No distinguishing feature in the present facts has been pointed out which would warrant taking a different view. Besides the Tribunal in its order in Boskalis Dredging India (supra) placed reliance upon the decision of this Court rendered in an appeal filed by the Revenue in G.R. Shipping Ltd. being Income Tax Appeal No.598 of 2009 which was dismissed on 20.07.2008 upholding the view of the Tribunal on identical issue. Moreover it is clarified by the counsel that the refining machinery has itself been sold during the next year.

e. In the above view question Nos.(a) & (b) formulated do not give rise to any substantial questions of law. Accordingly not entertained."

24 Likewise Gujarat High Court in the case of Nirma Credit and Capital Ltd. v. ACIT reported in 390 ITR 302 has held as under:

"8. The record reveals that the reason assigned by the Assessing Officer for rejecting the depreciation is that the assessee had stopped the manufacturing activity and therefore, the question of use of machinery does not arise. However, the CIT(A) reversed the findings of the Assessing Officer on the premise that individual items included in the block are not to be considered separately for the purposes of granting depreciation in light of the amended provisions. We do not find any legal infirmity in the aforesaid view adopted by the first appellate authority since the assessment order itself reveals that it is not the case of Assessing Officer that the assets were not put to use at all. Once the factory building is put to use, it is not possible to restrict the depreciation on the said building by stating that only a portion thereof has been put to use. Similarly, in relation to block of assets, it is not possible to segregate items falling within the block for the purposes of granting depreciation or restricting the claim thereof. Once

it is found that the assets are used for business, it is not necessary that all the items falling within plant and machinery have to be simultaneously used for being entitled to depreciation."

25. Therefore, following the aforesaid judgments since the assets of M/s.MSL after amalgamation have become assets of assessee company by operation of Law it falls in to the "Block of assets" of the assessee company from 01.04.2009 and though such assets, non-functional, yet they cannot be segregated and depreciation has to be allowed taking the first year as AY 2010-11 onwards and WDV to be calculated for AY 2012-13 as discussed above and we order the AO to calculate the WDV accordingly and allow the same in accordance to law. Grounds 6, 7 and 8 for AY 2012-13 are therefore stands allowed."

7.2 Ld. Counsel also placed reliance on the decision of Coordinate Bench of ITAT, Delhi in the case of *Pawan Hans Helicopters Ltd. v. DCIT in ITA No. 419/Del/1994 dated 14.07.2021* wherein also the similar issue was addressed and held in favour of the assessee.

8. Per contra, Ld. Sr. DR placed strong reliance on the decision of Ld. CIT(A) and referred to the judicial precedents dealt in the same.

9. We have heard the rival contentions, perused the material available on record and gone through the judicial precedents on the subject matter placed before us. Before adverting on the issue, let us apprise ourselves with the provisions of Section 32 of the Act, which were amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 w.e.f. 01.04.1988. As per the amended section 32 of the Act, deduction is to be allowed - *"in the case of any block of assets, such percentage on the written down value thereof as may be prescribed".* Thus, with the amendment, the depreciation is allowed on block of assets. The definition of 'block of assets' is defined by section 2(11) of the Act according to which *block of assets means, group of assets falling within a class of assets, comprising –*

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patent, copy rights, trademarks, licences, franchises or other business or commercial rights of similar nature, not being goodwill of a business or profession, in respect of which the same percentage of depreciation is prescribed.

10. With the aforesaid amendment, the depreciation is now to be allowed from AY 1989-90 on the written down value of the block of assets at such percentage as may be prescribed. Further, with this amendment, individual assets have lost their identity and the concept of block of assets has been introduced for the purpose of calculating the depreciation. We note that CBDT issued a Circular No. 469 dated 23.09.1986 explaining the purpose behind the amended provisions of section 32 of the Act wherein the rationale behind the introduction of concept of 'block of assets' is described as under:

> *"6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."*

10.1 Thus, once an asset is part of the block of assets and depreciation is granted on that block, it cannot be denied in subsequent years on the ground that one of the assets is not used by the assessee in some of the

years. The concept of user of assets has to apply on the block of assets as a whole instead of an individual asset.

11. We further note that an explanation was inserted in sub-section (1) of section 32 of the Act by Finance Act, 2001 w.e.f. 01.04.2002 which is reproduced as under:

> *"Explanation 5. – for the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income."*

11.1 The notes to clauses as mentioned in Finance Bill, 2001 in respect of amendment of section 32 of the Act for the insertion of explanation (5) states that a new explanation (5) in clause (ii) explanation (1) of section 32 of the Act is inserted so as to clarify that the provisions of sub-section (1) of section 32 of the Act shall apply whether or not the assessee has claimed the deduction of depreciation in computing his total income. It also states that this amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the AY 2002-03 and subsequent years.

11.2 The explanatory memorandum to the Finance Bill, 2001 relating to this amendment is reproduced as under:

> *"Under the existing provisions of sub-section (2) of section 32 of the Income-tax Act, carry forward and set off of unabsorbed depreciation is allowed for 8 assessment years.*
>
> *With a view to enable the assessees to conserve sufficient funds to replace capital assets, specially in an era where obsolescence takes place so often, the Bill proposes to dispense with the restriction of 8 years for carry forward and set off of unabsorbed depreciation.*
>
> ***It is further proposed to clarify that in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory.***

> *The proposed amendments will take effect from the 1st April, 2002, and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent years."* [emphasis supplied by us by bold and underline]

11.3 Thus, from the explanation so inserted as quoted above, we note that deduction of depreciation is to be allowed mandatorily in computing the profits and gains of business or profession for any previous year.

12. In the present facts and circumstances of the case, it is undisputed that the plant and machinery, factory building etc., were put to use in the preceding years whereon depreciation has been claimed according to their respective block of assets as per the rates prescribed thereon. It is not a case where we need to deal with the issue of whether assets have been put to use or not so as to form part of the block of assets in their first year. It is not the case of AO that the assets were not put to use at all. Once the assets have been put to use, the claim of depreciation allowance on the said assets cannot be restricted.

12.1 Further, it is important to note that once it is found that the assets are used for business, it is not necessary that all the items falling within that particular block of assets had to be simultaneously used for being entitled to depreciation. In the present case, we note that assessee submitted that it has changed its business model from manufacturing to trading in tea though no sale or manufacturing of tea happened during the year under consideration. Ld. AO also noted that the machineries might have been tested and maintained to keep it ready to dispose off as per the approval granted by the shareholders, fact of which is noted in the Director's report referred above. In the Director's report, assessee had also submitted that it was open for the assessee to lease out the plant and machinery. All these reflect the intention of the

assessee which are in the nature of passive use of the assets on which depreciation has been claimed.

12.3 We also note that the case laws on which ld. CIT(A) has placed reliance do not cover the case of the assessee. Ld. CIT(A) placed reliance on the decision of Hon'ble Jurisdiction High Court of Calcutta in the case of *CIT v. Oriental Coal Co. Ltd. (1994) 206 ITR 682 (Cal)*, for which we note that it deals with AYs 1983-84 and 1984-85 which are prior to the amendment made to section 32 of the Act as referred above wherein the concept of 'block of assets' was not brought on the statute. Hence, the said decision cannot be applied in the present case. Also he placed reliance on the decision of Hon'ble High Court of Kerala in the case of *CIT v. Punalur Paper Mills (2019) 111 taxman.com 50* from which we note that the Hon'ble High Court has stated that *"passive use cannot be extended for time immemorial nor for 24 years in which assessee's unit had remained closed."* Thus, the period of time involved was of 24 years and thus it is distinguishable on this very fact. Further, ld. CIT(A) relied on the decision of Coordinate bench of ITAT, Mumbai in the case of *ACIT v. Rishiroop Polymers Pvt. Ltd. (2006) 102 ITD 128 (Mum)* which deal with the issue of assets having been put to use or not which is not the case before us.

13. On perusal of the decision of *Coordinate bench of ITAT, Kolkata* in the case of *Hindusthan Engineering & Industries Ltd. (supra)*, we note that it has extensively dealt with the issue in hand, taking into consideration the amendment brought into section 32 of the Act with the concept of 'block of assets'. Furthermore, we note that three different Hon'ble High Courts of Delhi, Bombay and Gujarat have been considered while arriving at the said decision by the Coordinate bench

to allow the claim of depreciation in respect of closed units or non-functional undertakings.

13.1 Drawing our force from the *ratio decidendi* of the decision of Hon'ble High Courts referred to above in the decision of *Hindusthan Engineering & Industries Ltd. (supra)*, we hold that the assessee cannot be denied the benefit of depreciation claimed u/s. 32 of the Act in respect of its plant and machinery, factory building, etc., in the amount of Rs.1,34,95,087/-. Thus, considering the submissions made by the parties, material placed on record, judicial precedents referred to above, amendment brought into section 32, especially explanation (5) to sub-section (1) of section 32 of the Act, we direct the Ld. AO to allow the claim of depreciation. Accordingly, the ground of appeal is allowed.

14. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 01 August, 2022.

Sd/-	**Sd/-**
(RAJPAL YADAV)	**(GIRISH AGRAWAL)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Kolkata, Dated: 01.08.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(A)-20 Kolkata
4. The CIT- Kolkata.
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of dictation- 21/07/2022
2. Date on which the typed draft order is placed before the Dictating Member and Other member 22/07/2022
3. Date on which the approved order comes to the Sr. P.S./P.S. - /08/2022
4. Date on which the file goes to the Bench Clerk /07/2022
6. Date on which the file goes to the O.S. …….
7. Date of Dispatch of the Order……..…