

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 958/MUM/2020 (A.Y: 2016-17)

M/s. Ambica Chemicals and Synthetics Pvt. Ltd., 396, Kamath Industrial Estate Veer Savarkar Marg, Prabhadevi Mumbai - 400025 PAN: AAACA3963B	v.	DCIT – Central Circle – 5(3) Room No. 1906, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021
(Appellant)		(Respondent)

Assessee Represented by	:	Ms. Priyanka Shah
Department Represented by	:	Shri Manoj Sinha
Date of Hearing	:	08.09.2022
Date of Pronouncement	:	10.11.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.11.2019 for the A.Y.2016-17.

2. Assessee has filed this appeal raising following grounds in its appeal:

"1. All of the below mentioned grounds of appeal are without prejudice and are mutually exclusive to each other.

2. That the assessment order u/s 143(3) of the Income Tax Act, 1961 ("the Act") dated 30.11.2018 passed by the Assessing Officer ("AO") and the additions/disallowances made therein are illegal, bad in law and without jurisdiction.

3. That the AO and the Commissioner of Income Tax (Appeals) ("CIT(A)") have grossly erred on facts and in law in passing the orders without giving a sufficient and reasonable opportunity to the assessee to be heard.

4. That on the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance made by the learned AO of depreciation claimed on plant and machinery, Rs.77,40,772/-.

5. That the addition / disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are highly excessive.

The Appellant craves leave to add, amend, alter and/or delete any of the above"

3. The Ground Nos. 1 to 3 are relating to jurisdictional issue and Assessing Officer has not given any proper opportunity to the assessee. However, Ld. AR of the assessee did not press these grounds, therefore these grounds are dismissed as not pressed.

4. Ground No. 4 and 5 are relating to disallowance of depreciation claimed by the assessee on plant and machinery. The relevant facts of these grounds are, at the time of assessment the Assessing Officer observed that assessee has added new plant and machinery during this

year and in this regard assessee was asked to furnish the details of machineries, places where such machineries were installed, their utilization for the purpose of business and bills and vouchers in respect of additions made during the year. Assessing Officer observed that the assessee failed to furnish any documentary evidences or any details in respect of existence on plant and machinery, their utilization for the purpose of business. Accordingly, he disallowed the claim of depreciation in respect of plant and machinery to the extent of ₹.77,40,772/-.

5. Aggrieved, assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A) assessee filed written submissions, for the sake of clarity it is reproduced below: -

"AO has made disallowance of depreciation claim of Rs 77,40,772/- on Plant and machinery under the erroneous presumption that the same have not been put to use during the year as the income of the appellant is primarily from trading activities. AO ought to have appreciated that temporary suspension of manufacturing activity cannot disentitle from claim of depreciation, particularly under the block system of depreciation."

6. After considering submissions of the assessee, Ld.CIT(A) sustained the additions made by the Assessing Officer by observing that the assessee is incorrect in alleging that the disallowance is based on the consideration that during the year the income was from trading and Assessing Officer did not appreciated that there was temporary

suspension of manufacturing. In fact, the disallowance is on account of the failure of the assessee to furnish any documentary evidences, details in respect of the existence of plant and machinery, their utilization for the purpose of business and addition made during the year against which depreciation is claimed. Since no details and primary evidences are furnished in the appellate proceedings also the ground raised by the assessee are dismissed by the Ld.CIT(A). Aggrieved, assessee is in appeal before us.

7. At the time of hearing, Ld. AR brought to our notice relevant facts on record and submitted that assessee has filed the return of income and brought to notice of the Assessing Officer the annual reports and computation of total income. In this regard she brought to our notice that assessee has claimed the depreciation as per Companies Act which is duly audited by the statutory auditor and she brought to our notice Page No. 23 of the Paper Book which is computation of total income as per which income from business or profession is declared as ₹.9,27,284/- (loss). The same was computed from the Profit and Loss Account declared by the assessee in statement of Profit and Loss Account and disallowed the depreciation debited to the Profit and Loss Account as per Companies Act. Since the result also is loss, therefore assessee has not claimed any

depreciation during this year. As per the statement the allowable depreciation is ₹.77,53,138/-. She further submitted that the assessee has claimed the depreciation based on the addition made during this year and depreciation is nothing but decrease in valuation of the asset which is put to use in the business. However, since there is no manufacturing or processing business carried on by the assessee during this year still assessee has installed the machinery in the business. The assessee is eligible to claim the relevant depreciation during this assessment year.

8. On the other hand, Ld.DR submitted that the Ld.CIT(A) and Assessing Officer disallowed the depreciation not on the basis of whether the assessee is carried on any manufacturing or processing in the business rather assessee has not produced any documentary evidences of purchase, installation or usage of the machinery in the business. Even in the second appellate proceedings also assessee has not brought any record, any evidences or documentation to support the installation or usage of the machinery in the business and prayed that the addition may be sustained in the absence of any documentation.

9. Considered the rival submissions and material placed on record, we observe from the financial statements submitted before us that assessee is into trading of products and most of the revenues are generated from

purchase of products and re-sale of the same product. Therefore, there is no manufacturing or processing activities during this year. However, assessee has not brought on record any historical data to submit that assessee has manufacturing activities in the past. In the previous assessment year also assessee has earned the revenue in the trading activities. As per fixed asset schedule, assessee has made addition of plant and machinery of ₹.5,15,48,690/- during this year and accordingly, claimed the depreciation of plant and machinery to the extent of ₹.33,45,893/- in the block plant and machinery and for the purpose of Income-tax assessee has claimed the depreciation in plant and machinery to the extent of ₹.77,40,772/-.

10. Further, we observe that in the Auditor's Report filed alongwith the financial statements in which the Auditor in Annexure-1 to the Auditors Report declared in Point No. (i) "that the company does not have any fixed asset. Therefore, the provision of this clause of the companies (Auditors Report) order 2016 is not applicable to the company". Whereas at the same time assessee claims that assessee has purchased huge plant and machinery to the extent of ₹.5,15,48,690/- and claimed depreciation without there being any documentation of installation. We are in agreement of the fact that assessee may purchase the plant and

machinery and may not carried out the production activity, still assessee can claim depreciation once they install the machinery. It is not necessary that assessee has to carry out the production activity to claim the depreciation. However, it is the duty on the part of the assessee to file the relevant documentation in support of purchases, installation before the assessing authorities. In the given case assessee has purchased the plant and machinery before September and claimed the depreciation accordingly. However, when the Assessing Officer asked the assessee to submit the relevant documents in support of the claim of the installation of the machinery nothing was submitted before the Assessing Officer or First Appellate Authority. Even before us assessee has only submitted financial statements and return of income only which was submitted before the assessing officer. In our considered view it is the duty upon the assessee to file the relevant purchase documents and installation documents before the Assessing Officer. Therefore, we are inclined to remit this issue back to the file of the Assessing Officer and direct the assessee to file the relent documentation before the Assessing Officer. Accordingly, we direct the Assessing Officer to verify the purchase documents and installation and allow the depreciation whether or not assessee commenced the manufacturing activity. Therefore, the ground

raised by the assessee is allowed for statistical purpose with the direction that assessee to file the relevant information to claim the depreciation before the Assessing Officer.

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

Order pronounced in the open court on 10th November, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 10/11/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum