

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.1154/Mum/2022
(Assessment Year: 2017-18)

Dy. CIT, Circle-2(1)(1) Room No. 561, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Hariomkar Food Products Private Limited 207 Shyam Kamal Complex, Vile Parle (E), Mumbai-400 057
PAN/GIR No. AADCH 2012 B		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Yogesh A. Thar a/w Shri Chaitanya Joshi
Respondent by	:	Shri Rakesh Ranjan

Date of Hearing	:	15.09.2022
Date of Pronouncement	:	12.12.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The grounds of appeal are as under:

i) *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition/disallowance of a sum of Rs.14,12,48,379/- claimed as investment allowance u/s. 32AC(1A) of the Income Tax Act, 1961 ignoring that the allowance of 15% under this section of the Act is only available to any assessee which is engaged in the business of manufacturing or production of any article or thing and that the wordings of the section cannot be extended so as to include a company (assessee) which is contemplating to start manufacture or production or which is under the process of setting up of manufacturing infrastructure?"*

ii) *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in ignoring that in the Audited 'Balance Sheet' as on 31.03.2017 as well as the 'returns of income' filed by the assessee for 'A.Y.: 2017-18' (both 'original' and 'revised') any "installation" of "New" Plant & Machinery had not shown /reflected for the year under consideration?"*

3. The brief facts are that the assessee is a private limited company engaged in making sweets and namkeen. The assessee filed its return of income dated 30.10.2017, declaring current year loss at Rs.7,79,84,343/- and deemed total income u/s.115JB at Rs.7,79,84,343/-. The assessee filed its revised return dated 04.09.2018, declaring current year loss at Rs.14,12,48,379/- and deemed total income u/s.115JB of the Act (-) 7,79,84,343/-. The assessee's case was selected for scrutiny and assessment order u/s. 143(3) of the Act was passed by the A.O. dated 17.12.2019, by making disallowance of deduction claimed u/s. 32AC(1A) of the Act.

4. The assessee was in appeal before the Id. CIT(A), as against the assessment order who allowed the appeal of the assessee.

5. The Revenue is in appeal before the Tribunal, challenging the order of the Id. CIT(A).

6. It is observed that the assessee has claimed an investment allowance u/s.32AC(1A) of the Act, amounting to Rs.14,12,48,379/-, being 15% of the total installed machinery value of Rs.94,16,55,861/-. It is found that the A.O. has disallowed the same on the ground that the assessee company has not earned any trading and manufacturing activity for the year ending 31.03.2017 and that the income from manufacturing and sale of sweets and namkeen is declared as Nil. The A.O. further observed that the assessee has shown fixed asset under "capital work-in-progress" and

has not claimed any depreciation on fixed assets for the impugned year. The A.O. has disallowed the claim of the assessee on the ground that the assessee has not furnished any explanation nor has it provided any supporting evidence to substantiate its claim u/s.32AC(1A) of the Act. The A.O. further held that from the balance sheet of the assessee company it is observed that no new plant and machinery was installed and held that the “capital work-in-progress” cannot be considered to include plant and machinery installed even otherwise.

7. The Id. CIT(A) during the first appellate proceeding, stated that the assessee vide email dated 17.12.2019 furnished a copy of certificate dated 31.03.2017 obtained from M/s. Khedkar & Associates Consultant Private Limited (Government approved Chartered Engineer, NABL accredited), which specified that plant and machinery estimating to Rs.94,16,55,860/- was installed by the assessee on or before 31.03.2017. The Id. CIT(A) further held that the assessee has also submitted details of the plant and machinery, along with the sample invoices, details pertaining to imports of machinery purchased during the financial year 2016-17, copy of electricity bill, for March, 2017 where the assessee has incurred electricity expenses of Rs.3,15,410/- for the purpose of trials runs of the newly erected machinery. The assessee has submitted to the Id. CIT(A) that all these evidences were furnished during the assessment proceeding on 17.12.2019 and that the same did not amount to additional evidence before the first appellate authority. The Id. CIT(A) upon perusal of the submissions made by the assessee held that the assessee has installed plant and machinery before 31.03.2017 and was entitled to claim u/s.32AC(1A) of the Act.

8. The Id. Departmental Representative (Id. DR for short) for the Revenue contended that the assessee was not entitled to the claim u/s.32AC(1A) of the Act for the reason that new plant and machinery was not shown by the assessee under the 'fixed assets' in the balance sheet for the impugned year and that section 32AC(1A) was applicable only to companies which are engaged in the business of manufacturing or production of any article or thing and does not include company which is contemplating to start manufacturer or production. The Id. DR further stated that the assessee has not proved the actual installation and that the assessee has merely produced the documentary evidence pertaining to the purchase of the said machineries. The Id. DR relied on the order of the A.O.

9. The Id. Authorized Representative (AR for short), on the other hand, controverted the same and contended that all the documentary evidences pertaining to acquisition as well as installation was filed before the A.O. and that the A.O. has failed to consider the same. The Id. AR relied on the decision of the Hon'ble Supreme Court in the case of *Carew and Co. Ltd. v. Union of India* (A.I.R. 1975 S.C. 2260) and Hon'ble Karnataka High Court decision in the case of *CIT vs. KBD Sugars & Distilleries Ltd.* (ITA No. 773/2009, vide order dated 16.10.2015). The Id. AR also relied on the decision of the co-ordinate bench in the case of *DCIT vs. SNJ Distillers Pvt. Ltd.* (in ITA No. 2993/Chny/2019 vide order dated 04.11.2020).

10. Having heard the rival submissions and perused the materials on record. It is observed that the assessee has furnished all the supporting evidences before the A.O. as well as before the Id. CIT(A) pertaining to the acquisition of machineries, amounting to

Rs.94,16,55,861/-. The assessee's claim for deduction u/s.32AC(1A) of the Act was denied by the A.O. on the ground that the assessee has failed to substantiate the installation of the machinery and that the assessee has only supported the acquisition of the same. Hence, the A.O. held that the assessee was not entitled to the deduction u/s.32AC(1A) of the Act. It is pertinent to extract the provision of section u/s.32AC(1A) of the Act for ease of reference:

Investment in new plant or machinery.

32AC. (1A) *Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired and installed during any previous year exceeds twenty-five crore rupees, then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new assets for the assessment year relevant to that previous year:*

Provided *that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed.*

11. The A.O. in the present case has denied the fact of installation of the plant and machinery and has held that the assessee company was only "contemplating to start" manufacture or production and that the provisions of section 32AC(1A) is eligible only for company which is 'engaged' in the business of manufacture or production. The assessee has relied on the full bench decision of the Hon'ble Supreme Court in the case of *Carew and Company Ltd. vs. Union of India* AIR 1975 SC 2260 (SC), which has interpreted the term 'is engaged in' and the relevant extract is cited hereunder for reference:

21..... 'Is engaged in production', in the context, takes in not merely projects which have been completed and gone into production but also blue-print stages, preparatory moves and like ante-production points. It is descriptive of the series of steps culminating in production. You are engaged in an undertaking for production of certain goods when you seriously set about the job of getting everything essential to enable production.

12. The assessee has also relied on the decision of the Hon'ble Karnataka High Court in the case of *CIT vs. KBD Sugars & Distilleries Ltd.* (ITA No. 773/2009, order dated

16.10.2015), which has incorporated the term 'commencement of business' and 'engaged in business'. The aforementioned decisions have specified that engaging in business is different from commencement of production and that engaging in business would according to the assessee also includes trial run of the installed machineries which took place on or before March 31st.

13. The A.O. has relied on the audited balance sheet of the assessee company as on 31.03.2017 and the return of income filed for A.Y. 2017-18. The A.O. held that since there was no installation of new plant and machinery during the impugned year and only the capital work-in-progress was shown at Rs.2,26,89,26,883/- as on 31.03.2017. The A.O. inferred that the plant and machinery was still under construction, establishing, installation, etc. and was not ready to be put to use. The A.O. also held that capital work-in-progress will not include plant and machinery. The assessee controverted the same by stating that plant and machinery were shown under capital work-in-progress for the reason that the existing sales of the company was not effected during the financial year 2017 and the A.O.'s allegation that depreciation was not claimed by the assessee was due to the reason that as it was in the stage of trial run, depreciation was not claimed by the assessee. Further to this, the A.O. held that since the assessee has not claimed depreciation u/s.32 of the Act, the assessee will not be entitled to claim deduction u/s.32AC(1A) of the Act. The assessee has controverted the same by its submission that section 32 and section 32AC(1A) of the Act are both independent of each other. It is evident that it is not a pre-requisite to claim depreciation for claiming deduction u/s.32AC(1A) of the Act. It is also observed that the A.O. has not denied the acquisition

of machinery amounting to Rs.94,16,55,861/- for which the assessee has claimed 15% deduction u/s. 32AC of the Act. The pre condition for claiming deduction as per the provision of section 32AC of the Act is that the assessee ought to have acquired and installed new assets during any previous year which exceeds Rs.25 crores on or before 31.03.2017. The assessee has in fact furnished copy of certificate of M/s. Khedkar and Associates Consultant P. Ltd. indicating that the said plant and machinery was installed by the assessee on or before 31.03.2017, along with supporting documents. This facts has not been denied by the lower authorities. It is also observed that the assessee company has commenced sale on 29.04.2017 and state that the said fact is sufficient to prove that the plant and machineries were installed prior to this as it was impossible to commence the sale without preliminary work such as trial production of run, training of personnel, etc. much before the commencement of sale. The A.O. has only relied on the audited profit and loss account which disclosed loss due to excess of expenses and also the audited balance sheet and the return of income. It is pertinent to point out that the provision of section 32AC is a beneficial provision inserted vide Finance Act, 2014 to promote and encourage business of manufacture or production of any article or a thing by way of investment allowance for plant or machinery and for this purpose even the threshold limit of investment was reduced from Rs.100 crores to Rs.25 crores. This clearly implies that the said beneficiary provision is to be construed so as to entitle the assessee with the benefit of additional deduction. The A.O. in the present case has only relied on the audited P & L account, balance sheet and the return of income of the assessee and has not gone beyond to enquire into the credibility of the documentary evidences furnished by the assessee to substantiate its claim. We would also like to place

our reliance on the decision of the co-ordinate bench in the case of *SNJ Distillers Pvt. Ltd.* (supra) which has dealt with the similar issues and has held in favour of the assessee.

14. From the above observation, we find no infirmity in the order of the Id. CIT(A) in allowing the claim of the assessee u/s. 32AC of the Act. Hence, we direct the A.O. to delete the impugned addition in disallowing the deduction claimed u/s. 32AC of the Act.

15. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12.12.2022.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 12.12.2022

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai