

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 199/MUM/2021  
(Assessment Year: 2013-14)

Assistant Commissioner of Income Tax,  
Circle-15(1)(1), Mumbai,  
Room No. 451, 4<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai - 400020 ..... Appellant

M/s Oxides and Specialities Ltd., ..... Vs  
R-802, TTC Industrial Area,  
Thane Belapur Road, Mahape,  
Navi Mumbai - 400701  
[PAN: AAAAFO7222L] ..... Respondent

Appearances

For the Appellant/Department : Ms. Shreekala Pardesi  
For the Respondent/Assessee : Ms. Dinkle Hariya

Date of conclusion of hearing : 12.01.2023  
Date of pronouncement of order : 24.01.2023

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 21.01.2020, passed by the Ld. Commissioner of Income Tax (Appeals)-24 Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2013-14 whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 24.11.2017, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). This appeal was dismissed vide order dated 17.01.2022 on account of low tax effect. However, vide order, dated, 21.11.2022 Miscellaneous Application (MA No. 81/Mum/2022) filed by the Revenue was allowed as the Appeal

fell under the exceptions provided in paragraph 10(c) of the Circular No. 3 of 2018 issued by the Central Board of Direct Taxes (CBDT) as amended by letter dated 20.08.2018.

2. The Revenue has raised the following grounds of appeal:
  - “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in directing the AO to delete the disallowance of Rs. 50,56,071/- made on account of Depreciation, without appreciating the fact that the assessee company has no business activity during the relevant previous year?*
  2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in directing the AO to delete the disallowance of Rs. 50,56,071/- made on account of Depreciation, without appreciating the fact that during the year under consideration, the assessee was in BIFR and was not carrying out any business activity?*
  3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in directing the AO to delete the disallowance of Rs, 50,56,071/- made on account of Depreciation, without appreciating the fact that in order to claim depreciation on any fixed asset, such asset must be put-to-use for the purpose of business during the relevant previous year?*
  4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in directing the AO to delete the disallowance of Rs. 50,56,071/- made on account of Depreciation, without appreciating the fact that during the relevant previous year, there is no usage of the asset/ machinery in business in relation to which the depreciation was claimed?”*
  5. *The Appellant prays that the order of the CIT(Appeals) on the above ground be set aside and that of the AO be restored.”*
3. All the grounds raised by the Revenue are directed against the order of CIT(A) deleting the disallowance of depreciation of INR 50,56,071/-, and are therefore, taken up together.

4. The relevant facts in brief are that the Assessee filed return of income on 27.09.2013 declaring loss of INR 77,73,471/-. The case of the Assessee was selected for scrutiny and vide order dated 24.11.2017 assessment under Section 143(3) read with Section 147 of the Act was framed on the Assessee. The Assessing Officer disallowed the claim of depreciation of INR 50,56,071/- made by the Assessee in the return of income on the ground that the Assessee was before Board for Industrial and Financial Reconstruction (BIFR) during the relevant previous year and therefore, the Assessee was not operating in its machinery.
5. In appeal preferred by the Assessee, the CIT(A) allowed the claim of depreciation of INR 50,56,071/- made by the Assessee by relying upon the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Laxmiji Sugar Mills Ltd. : [2012] 20 taxmann.com 41 (Delhi) and the decision of the Tribunal in the case of Rajasthan Explosives & Chemicals Ltd. vs. JCIT- [2017] 57 ITR (T) 143 (Jaipur-Tribunal).
6. Being aggrieved, the Revenue has now in appeal before us.
7. The Learned Authorised Representative for the Assessee submitted that the Assessing Officer has disallowed the depreciation of INR 50,56,071/- for the reason of non-user of the machineries due to closure of the manufacturing activity of the Assessee. The Assessee commenced its business in year 1991 and had been using the plant and machineries and other fixed assets since then. The fixed assets of the Assessee Company always remained in the factory and were ready for use during the relevant previous year, however, the same could not be utilised due to circumstances beyond the control of the management. However, the Assessee remained a passive user

during the period the management made earnest efforts to revive the business and start the manufacturing activity. She submitted that even if the asset is ready for use but could not be actually used due to unavoidable circumstances, claim of depreciation is to be allowed. The Assessing Officer has never disallowed the claim of depreciation. In the immediately preceding assessment year (i.e. Assessment Year 2012-2013), the claim of depreciation was allowed. Similarly, in the immediately subsequent assessment year (i.e. Assessment Year 2014 – 2015) also, after scrutiny, the claim of depreciation was allowed by the Assessing Officer. A copy of the assessment orders were also filed before CIT(A). She vehemently contended that in view of the aforesaid, the claim of depreciation of INR 50,56,071/- be allowed and placed reliance on the judgments cited in the order passed by the CIT(A) in support of her contentions.

8. Per contra, the Ld. Departmental Representative relied upon the assessment order and highlighted the fact that the Assessee was before BIFR during the relevant previous year and to the knowledge of the Ld. Departmental Representative, has not been revived till date. She submitted that the Assessing Officer was justified in denying the claim of depreciation as the assets were not put to use during the relevant previous year.
9. We have heard the rival submissions and perused the material on record. It is admitted position that the Assessing Officer had disallowed the claim of depreciation made by the Assessee since the machines were not being operated during the relevant previous year. The CIT(A) allowed the claim of depreciation following the decision of the Hon'ble Delhi High Court in the case

of Laxmiji Sugar Mills Ltd. (supra) wherein contention of the Revenue that depreciation claimed by an assessee should not be allowed as the sugar mill had stopped functioning and was not operational during the relevant previous year was rejected by the Hon'ble Delhi High Court. It is not the case of the Revenue that the machinery was not ready for use. In the case of Rajasthan Explosives & Chemicals Ltd (supra), followed by the CIT(A), the Tribunal allowed claim of depreciation even though the factory was closed temporarily on account of liquidity problems and the matter was pending before BIFR for revival of the business. The CIT(A) had allowed claim for depreciation by following the aforesaid judgments/decisions wherein depreciation has been allowed in similar facts and circumstances. Further, the Assessee has been allowed depreciation for the immediately preceding assessment year (i.e. Assessment Year 2012-13) as well as for the immediately succeeding Assessment Year (i.e. 2014-15) in the identical facts and circumstances. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) and decline to interfere with the same. Ground No. 1 to 5 raised by the Revenue are, therefore, dismissed.

10. In result, the present appeal by the Revenue is dismissed.

Order pronounced on 24.01.2023.

*Sd/-*  
(B.R. Baskaran)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.01.2023  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai