

आयकर अपीलीय अधिकरण न्यायपीठ नागपुरमें।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

V I R T U A L H E A R I N G

BEFORE S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.196/NAG/2017

निर्धारणवर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax, Akola Circle, Akola.	Vs	M/s.Shaheen Frozen Foods, C/o.SyedAinuddin Khatib, Syed Pur, Ward No.19, Balapur, Dist.Akola – 444302. PAN: ABTFS 3422 J
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri S.C.Thakar – AR
Revenue by	Shri Kailash Kanojiya – DR
Date of hearing	15/11/2022
Date of pronouncement	13/02/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Revenue against the order of
ld.Commissioner of Income Tax(Appeals)-1, Nagpur dated
31.03.2017emanating from the order of ACIT(AO) under section
143(3) dated 23.03.2016. The Revenue has raised the following
grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the learned
CIT(Appeals) has erred in allowing deduction of
Rs.10,39,93,933/- u/s 35AD of the I.T.Act which was disallowed

by the Assessing Officer.

2. *The learned CIT(Appeals) has gravely erred in holding that various machineries and equipments found to be purchased and installed after April 2012 in fact pertained to replacement of these items which were installed and commenced on various dates prior to 31/01/2012, as this finding is perverse on facts.*
3. *The learned CIT(Appeals) has gravely erred in not noticing that as per the audited balance sheet as on 31/01/2013 the opening WDV as on 01/04/2012 of land, factory-building, plant & machinery was only Rs.5,00,000/- and had the machineries been replaced after 01/04/2012, the same would certainly have been included in opening WDV as on 01/04/2012.*
4. *Any of the ground that may be taken with the permission of Hon'ble ITAT."*

2. **Brief facts:** The Assessee is in the business of processing & reselling of Buffallow Meat. The Assessing Officer(AO) has disallowed assessee's claim of deduction under section 35AD of Rs.10,39,93,933/-. The AO has given following reasons :

- i) Expenditure has not been incurred prior to the commencement of operations.
- ii) The cold storage plant was not ready as on 01.04.2012, but the business was started from 02.04.2012.
- iii) Assessee had not furnished documentary evidence like permission from Maharashtra Pollution Control Board, Electricity Bill etc.,
- iv) The refrigeration compressor, tube heat exchangers, air

cooling units were delivered on 01.01.2013, 14.02.2013, 02.03.2014. The air-cooling unit was installed on 14.02.2013. Cold storage machine was purchased on 10.09.2012. Thus, machines were purchased after 01.04.2012 means cold storage unit had not commenced on 01.04.2012.

- v) Violation of section 35AD(b) as the amount is not capitalized on the date of commencement of operation.

3. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) allowed the appeal of the assessee. Aggrieved by the order of the Id.CIT(A), the Revenue has filed appeal before this Tribunal.

4. The Id.Authorised Representative(Id.AR) of the assessee submitted that assessee had commenced operations on 02.04.2012 the entire cold storage facility was ready on that day. The Id.AR read out the relevant parts of the Id.CIT(A)'s order.

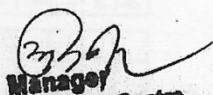

5. The Id.Departmental Representative(Id.DR) of the Revenue relied on the order of the Assessing Officer. The Id.DR submitted that the Id.CIT(A) has discussed in the order about permission from Maharashtra Pollution Control Board and Director of Industries, however, these documents were never produced before the Assessing Officer and therefore, the Id.CIT(A) has erred in considering the documents. Alternatively, Id.DR pleaded that the matter may be set-

aside to the file of the AO. The ld.DR also pleaded that the Auditor in the Audit Report has not mentioned about the deductions under section 35AD. The ld.DR invited our attention to page no.19 & 20 of the paper book which were relevant pages of the Audit Report to demonstrate that Auditor has not mentioned about deduction under section 35AD of the Act.

6. We have heard both the parties and perused the records. It is a fact the ld.CIT(A) has considered the certificate issued by Maharashtra Pollution Control Board and Director of Industries. The Assessing Officer has specifically mentioned that assessee had not filed any evidence like permission from Maharashtra Pollution Control Board, Electricity Bill etc. We have also gone through the copy of submission made by assessee before the ld.AO which is on page no.90 to 95 of the paper book. On perusal of the submission made by the assessee before the AO, it is observed that assessee had not filed copies of the certificate issued by Maharashtra Pollution Control Board and Director of Industries. Thus, the ld.CIT(A) has erred in admitting Copy of Certificate of Maharashtra Pollution Control Board and Director of Industries without giving any opportunity to the Assessing Officer. This is violation of Rule 46A of the Income Tax Rules.

7. On perusal of the copy of the acknowledgment issued by

District Industries Centre, Buldana dated 21.04.2012 it is observed that against "cold storage" they have mentioned "NS". The same is scanned and reproduced as under :

ACKNOWLEDGEMENT		DIRECT	
(Part -II)			
<p>M/S SHAHEEN FROZEN FOODS HAS FILED MEMORANDUM FOR A MEDIUM AT THE ADDRESS GUT NO. 193, AT TARODA, TQ. SHEGAON Dist. BULDANA PIN 444203 FOR THE ITEMS INDICATED BELOW AND THE ACITIVITY HAS COMMENCE FROM THE (DATE) 13/04/2012 AS STATED IN FORM NO. 03233 AND ALLOCATED ENTERPRENEURS MEMORANDUM NO. AS BELOW.</p>			
<p>DETAILS OF ITEM/ITEMS TO BE MANUFACTURED/SERVICE TO BE PROVIDED.</p>			
Sr.No.	Item of Manufacture/type of Service to be rendered	Capacity in case of Manufacture.	
01.	MEAT PROCESSING	600 TON	
02.	COLD STORAGE	NS	
		D	D M M Y Y Y Y
DATE OF ISSUE :		2	1 0 4 2 0 1 2
<p>NATURE OF ACTIVITY(MANUFACTURE-1,SERVICE-2,) CATEGORY OF ENTERPRISE (MICRO-1,SMALL-2,MEDIUM-3)</p>		1	3
ENTREPRENEURS MEMORANDUM NUMBER		2 7 0 0 4 2 3 0 0 0 0 2	
<p>PART-II (First two boxes are for State/Union Territory code, next three boxes are for District code, sixth and seventh boxes are for Category of enterprise (sixth box for indicting manufacturing or service and seventh box for indicating micro or small or medium) and last five boxes are for Entrepreneurs Memorandum number)</p>			
<p>Note :- THE ISSUE OF THIS ACKNOWLEDGMENT DOES NOT BESTOW ANY LEGAL RIGHY. THE ENTERPRISE IS REQUIRES TO SEEK REQUIRED CLEARANCES/LICENCE/PERMIT REQUIRED UNDER STATUTORY OBLIGATION STIPLATED UNDER THE LAWS OF CENTRAL GOVT/UT ADMINISTRATIONS/COURT ORDERS.</p>			
<p>DATE :- 21/04/2012 PLACE :- BULDANA</p>		 Manager District Industries Centre, Buldana DISTRICT INDUSTRIES CENTRE, BULDANA	
			

Thus, on perusal of the said acknowledgment, it is not clear whether the cold storage unit was started on 21.04.2012 or not!

8. It is also observed from the fixed assets schedule that opening WDV was only Rs.5,00,000/-, this was for land. There was no opening WDV for factory building, plant and machinery, furniture fixture. However, assessee had claimed before Id.CIT(A) that capital expenditure on plant and machinery till 31.03.2012 was

Rs.2,25,28,837/-. The assessee claimed before the Id.CIT(A) that these expenditures were capitalized on 15.05.2012. The assessee has also filed a copy of WIP Account before the Id.CIT(A). However, on perusal of the submission filed by the assessee before the AO which is part of paper book page no.90 to 95, it is observed that no such copy of WIP Account was filed before the AO. We have perused the copy of the Balance Sheet and its Annexures filed by the assessee for A.Y.2013-14 at page no.30 to 40. On perusal of the said Balance Sheet and its Annexure it is observed that assessee has not shown any work-in-progress(WIP). Therefore, assessee's claim that amount of Rs.2,25,28,837/- was shown as WIP as on 31.03.2013 is factually incorrect. It is also a fact that certain machineries like air-cooling units, refrigeration compressor, heat exchangers etc., were delivered to the assessee after 01.04.2012, the specific dates are mentioned by the AO in the order. The air-cooling unit was installed on 14.02.2013 as mentioned by the AO in the order. However, in this context assessee had submitted before the Id.CIT(A) that these machines which were purchased after 01.04.2012 were for replacement of certain parts. This claim of the assessee has not been verified by the AO. The Para 15 of the Audit Report submitted by the assessee is scanned and reproduced here as under :

FIXED ASSETS							
PARTICULAR	RATE	OP. WDV AS ON 01/04/12	ADD. DURING THE YEAR		TOTAL	DEPRECIATION	CL. WDV AS ON 31/03/13
			182 DAYS OR MORE	LESS THAN 182 DAYS			
LAND	0%	500,000.00	-	-	500,000.00	-	500,000.00
FACTORY BUILDING	10%	-	33,842,512.45	109,990.00	33,952,502.45	3,389,751.00	30,562,751.45
PLANT & MACHINERY	15%	-	29,602,775.69	5,423,922.40	35,026,698.09	4,847,211.00	30,179,487.09
FURNITURE & FIXTURE	10%	-	-	320,000.00	320,000.00	16,000.00	304,000.00
TOTAL		500,000.00	63,445,288.14	5,853,912.40	69,799,200.54	8,252,962.00	61,546,238.54

15 Amounts admissible under sections-	
(a) 33AB	Nil
(b) 33ABA	Nil
(c) 33AC (wherever applicable)	Nil
(d) 35	Nil
(e) 35ABB	Nil
(f) 35AC	Nil
(g) 35CCA	Nil
(h) 35CCB	Nil

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(i) 35D	Nil
(j) 35DD	Nil
(k) 35DDA	Nil
(l) 35E	Nil

9. Thus, in the Audit Report in the relevant part Auditor has not mentioned regarding claim of deduction under section 35AD of the Act. The Id.CIT(A) failed to consider this fact.

10. Since in this case, many of the evidences have been considered by the Id.CIT(A) without giving opportunity to the AO which is violation of Rule 46A. Many facts remained to be verified. Therefore, in the interest of justice, we set-aside the issue of eligibility of the assessee for deduction under section 35AD of the Act to the file of the AO for denovo adjudication. The AO shall provide opportunity to the assessee. Accordingly, the Revenue's

appeal is allowed for statistical purpose.

11. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open Court on 13th February, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th Feb, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, नागपुरबेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.