

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 45 to 47/Kol/2022
Assessment Year : 2011-12 to 2013-14

Hindustan Cables Limited	vs	DCIT, Circle-12(1), Kolkata
PAN: AACH 8575 L		
Appellant		Respondent

Date of Hearing	10.01.2023
Date of Pronouncement	23.02.2023
For the Assessee	Shri S.K. Bandopadhyay, CA & Shri Swaraj Kumar, FCA
For the Revenue	Shri Vivek Verma, CIT, DR

ORDER

PER SONJOY SARMA, JM:

The above captioned appeals have been filed by the assessee challenging the separate orders of National Faceless Appeal Centre (NFAC) all dated 23.11.2021 by which the Id. CIT(A) dismiss the appeals filed by the assessee relating to A.Y. 2011-12, 2012-13 & 2013-14. Since the facts and issues involved in these appeals are common except for date, figures and assessment year in question. Therefore, they have been clubbed together and taken up for disposal in a consolidated order for the sake of convenience. Therefore, we have first taken up the issues involved in ITA No. 45/Kol/2022:

“The assessing officer erred in making addition on account of depreciation amounting to Rs. 1,65,63,389/- in the order passed u/s 147/143(3) dated 05.11.2018 stating that ‘the depreciation claimed by appellant cannot be allowed as the production and business activity of the assessee company was stopped since the year 2003.”

Further the Id. CIT(A) ‘National Faceless Appeal Centre’ has erred in issuing order that ‘it is held that the action taken to disallow the depreciation claimed by the appellant company by the assessing officer is upheld.’”

2. Brief facts of the case are that the assessee company had furnished its return of income for the assessment year 2011-12 on 30.09.2012 disclosing loss of Rs. 321,87,94,739/-. The case of the assessee was selected for scrutiny u/s 143(3) of the I.T. Act and notice was issued u/s 143(2) of the Act and assessment order was passed on 19.03.2014 at an assessed loss of Rs.

321,87,94,739/-. The Id. AO noticed during the assessment proceeding, the business activity of the assessee company was closed and in earlier years, it was engaged in the business of manufacturing & selling of telecommunications cables and laying of cables. Subsequently, it was come to notice from the computation of depreciation on plant & machinery amounting to Rs. 1,65,63,389/- has claimed by assessee. However, the Id. AO notices that production and business activity of the assessee company was stopped since the year 2003 and the revenue earned by the assessee company in the previous year mainly comprised of revenue from operation of Rs. 19.47 lacs and other income of Rs. 2,19,34,578/- which included interest income of Rs. 1,07,87,277/- and miscellaneous income of Rs. 1,11,47,301/-. The Id. AO further noticed that company had no business and manufacturing activity from which revenue could be earned. Therefore, the fixed assets on which the depreciation was claimed remained idle since the year 2003. Accordingly, the Id. AO sent a proposal for initiating assessment proceedings u/s 147 of the Act to Id. PCIT-4, Kolkata vide letter dated 12.03.2018 and the Id. PCIT had approved the same. The Id. AO during the re-assessment proceeding, letter was issued to the assessee company to explain why the alleged claim of depreciation on plant & machinery amounting to Rs. 1,65,63,389/- should not be disallowed as there was no business activity of the assessee company during the year under consideration. In response to the same, assessee company filed reply before the Id. AO stating that assessee-company is a Government of India Undertaking and never have objectives to claim excessive allowances in any form under the Income Tax Act, for reduction of tax liability and it has satisfied all the conditions laid down u/s 32 of the Act, therefore, the claim of depreciation of plant & machinery may be allowed. Further, the Id. AO had viewed that since the assessee-company had no business and manufacturing activity from which revenue could be earned. Therefore, fixed assets on which depreciation was claimed idle since the year 2003. Therefore, the claim of depreciation on plant & machinery amounting to Rs. 1,65,63,389/- was

disallowed and added to the total income of the assessee for assessment year under consideration under the provisions of section 32 of the Act.

3. Dissatisfied with the above order passed by the Id. AO, assessee preferred an appeal before the Id. CIT(A), where the appeal of the assessee was dismissed.

4. Aggrieved by the order of Id. CIT(A), assessee preferred an appeal before the Tribunal.

5. At the time of hearing before us, Id. AR submitted that the assessing officer erred in making addition on account of depreciation amounting to Rs. 1,65,63,389/- in its order passed u/s 147(1)/143(3) dated 05.11.2018 as well as Id. CIT(A) erred in issuing order that action taken to disallow the depreciation claimed by the assessee company is correct. He further stated that the Id. CIT(A) while passing the order did not go to the detailed explanation of the term use as well as factual situation of the assessee which is stated as follows:

"i. In the instant case there was no permanent discontinuation or closure of the business during the relevant Previous Year neither the company been closed down nor it has intention to shut down the company or its operation such a temporary gone out in the business does not amount to closure of the business once and for all, further since appellant is Govt. of India Undertaking under Ministry of Heavy Industries, Government of India, it cannot be deemed or presumed that the company's business has been closed unless it has specific order/direction from the relevant regulatory body or Govt. of India, Hence it is clear that the term " Assets(one or more in the block) being used for the business is satisfied during that particular relevant Previous Year.

ii. Further the attention is drawn to the rational and purpose for which the concept of block assets was introduced as reflected in the CBDT's circular dated 23.09.1988 is that 'once the various assets are clubbed together and become 'block assets' within the meaning of section 2(11) it becomes one asset. Every time, a new assets is acquired, it is to be thrown in to the common hotchpotch, i.e. Block assets on meeting the requirements of depreciation being allowable at the same rate. Individual assets lose their identity and become an

inseparable part of the block asset in so far as calculation of depreciation is concerned, therefore even a single assets of the block is used during the year it shall be deemed that entire block is used and the block itself becomes eligible to claim depreciation, further it may also be noted that specific use of assets is not required to claim the depreciation.

iii. Further during the previous year under the consideration the revival plan also initiated by the concerned Ministry, and the company was not yet closed, also various assets being Building, Residential Building, Furniture & Fixtures, Plant & Machinery etc. including computer was also used for say, resident of employee, computerized work, travelling for the purpose of business etc. therefore it is implied that company was running and assets was being used for the purpose of business.

iv. Though as per section 32(1) the assets to be owned and 'used for the purpose of the business or profession the term use includes active as well as passive use "since some of the assets in the block was actively and actually used and other of that block was in passive use therefore entire block to be considered as in use."

6. On the other hand, ld. DR supported the order of the ld. CIT(A) and submitted that the production and business activity of the assessee-company was stopped since the year 2003. Therefore, alleged claim of depreciation on plant & machinery rightly disallowed by the authorities below.

7. We have heard the rival submissions and perused the material on record and going through the various case laws before us in respect of instant issue in the case of CIT vs Oriental Coal Co. Ltd. (1994) 120 CTR (Cal) 202: (1994) 206 ITR 682 (Cal). The Hon'ble Calcutta High Court held that there was strike, lockout in the factory for two years and the plant and machinery has not been actually used, then assessee would not be entitled for depreciation, Hon'ble Calcutta High Court held in that case as under;

"Section 32(1) lays down two conditions to be satisfied by an assessee before claiming any depreciation. These two conditions are, firstly, that the plant and machinery must be owned by the assessee and, secondly, the plant and machinery must be used for the purpose of business of the assessee. If the aforesaid two

conditions are satisfied, then the assessee is entitled to claim depreciation at the rates specified in the Appendix, to the Income-tax Rules. 1962.

In the instant case, it was not in dispute that the plant and machinery in question were owned by the assessee. One of the conditions specified in sub-section (1) of section 32 for grant of depreciation is the actual user of plant and machinery for the purposes of business. In certain cases like a pooling arrangement or where plant and/or machinery are kept as stand-by to provide against breakdown, even a passive user may entitle the assessee to claim depreciation under section 32. In the instant case, the 'B' unit remained under lock-out throughout the two previous years relevant to the assessment years 1983-84 and 1984-85. During the lock-out period, the plant and machinery had not been actually used for the purposes of its business.

Therefore, the second condition of section 32 had not been satisfied in the instant case. A lock-out was an act of the assessee in Suspending the business operations. The allowance of depreciation may not depend on the actual working of the machinery but no depreciation is allowable if the assets are not used at all for the business of the assessee in the relevant previous year. In the instant case, admittedly, none of the assets of the business were used by the assessee during the relevant previous year.

Therefore, since the plant and machinery in question were not actually used for the purposes of business, no depreciation was admissible to the assessee under sub-section (1) of section 32.”

8. In the present case of assessee, the production and business activity was stopped since the year 2003 and profit & loss account of the assessee company had revealed that the total revenue earned by the assessee in previous year mainly comprised of revenue from operation of Rs. 19.47 lacs and other income of Rs. 2,19,34,578/- which included interest income of Rs. 1,07,87,277/- and miscellaneous income of Rs. 1,11,47,301/- and the assessee company had no business and manufacturing activity from which revenue could be earned and machinery was not put to use as there was admittedly no manufacturing activity. In such a situation, depreciation could not be allowed on such non-use in view of the clear verdict given by the Hon'ble Calcutta High Court referred above and

which is directly on the present issue involved. Besides that by merely including an item in the block will not make it eligible for the depreciation if other conditions for allowability of claim are not satisfied. We, therefore, respectfully follow the judgement rendered by the Hon'ble Jurisdictional Calcutta High Court on this issue. Hence, we sustained the order passed by the Id. CIT(A) on this issue and dismiss the ground taken by the assessee.

9. Since we dismissed the appeal filed by the assessee challenging the impugned order passed by the Id. CIT(A) in ITA No. 45/Kol/2022 and reasons stated above, our decision shall mutantis and mutandis apply to other appeals being ITA Nos. 47 & 48/Kol/2022 as well and consequently all other appeals of the assessee are also dismissed.

10. In the result, all the captioned appeals filed by the assessee are dismissed.

Order pronounced in the open court on 23.02.2023

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 23.02.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Hindustan Cables Limited, Flat No. J-0, Golf Link Apartment, 50 Chanditala Lane, Kolkata-700040.
2. Respondent – DCIT, Circle-12(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata