

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 166/KOL/2022
Assessment Year: 2015-2016**

***M/s. General Polytex Pvt. Limited,.....Appellant
0/2171-72, MalviniWadi,
Sonifalia, Bhagatalav,
Gujarat-395003
[PAN: AACCB5335L]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri M.K. Patwari, FCA, appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : March 07, 2023

Date of pronouncing the order : March 16, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi dated 29.07.2021 passed for A.Y. 2015-16.

2. The Registry has pointed out that appeal is time-barred by 196 days. However, this delay is attributable to COVID period and, therefore, it is to be construed that there is no delay in filing the appeal.

3. The assessee has taken five grounds of appeal. However, its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the action of the ld. Assessing Officer by not allowing the claim for depreciation to the tune of Rs.2,08,01,232/-.

4. Brief facts of the case are that the assessee has filed its return of income electronically declaring a loss of Rs.4,41,66,129/- . The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer disallowed the claim of depreciation made under section 32 of the Income Tax Act. His finding reads as under:-

*“2.1. Disallowance of depreciation claimed u/s 32:-
The assessee had claimed depreciation u/s 32 of the I.T. Act for Rs.4,60,03,142/- during the FY- 2014-15. In the Annexure-I of the Tax Audit Report (Form 3CD) that the assessee has submitted, from the schedule of depreciation it is seen that the depreciable assets were purchased & put to use in the month of March,2015, i.e for less than a month only. Further it is seen*

that there is a minuscule turnover which has led to little production. Although the imported machines were commissioned in early or middle march 2015, it seems that the assessee willfully claimed depreciation related to such machines only to set off the profit of this year and carry forward the major portion of the depreciation to future assessment years and set them off with the future incomes and thereby reducing its future tax liabilities. Hence in view of the above discussions, as the depreciable assets are put to use for less than 180 days, the entire depreciation claimed of Rs.4,60,03,142/- is disallowed and added back to the total income of the assessee. I am also satisfied with the fact that this is a fit case for initiation of penalty proceeding u/s. 271 (1) (c) of the Act. These penalty proceeding are being initiated separately.

Addition: Rs.4,60,03,142/-

5. Dissatisfied with this order, assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. 1st Appellate Authority has accepted the claim of the assessee partly. The relevant finding of the ld. CIT(Appeals) reads as under:-

“7.1. The only ground of appeal is against the disallowance of depreciation of Rs.4,60,06,142/-. While disallowing the claim of the appellant, the AO has stated that the assets have been put to use for less than a month, there is very little production and the depreciation has been claimed only to set off the profit of this year.

7.2. The provision of section 32 of the Act are crystal clear and when the asset is put to use for less than 180 days, 50% of the depreciation is allowable. The AO has accepted in the order that the assets have put to use accepted during the year. Accordingly, 50% of the allowable depreciation can be claimed by the appellant.

7.3. As per Annexure-I form 3CD, there are 4 block of assets all of which were purchased and put to use in the month of March, 2015. The first block of asset is of plant & machinery where depreciation is allowable @15%. In the case of appellant, the depreciation has to be allowed @ 7.5% as the asset has been put to use for less than 180 days. Against purchase value of asset of Rs.24,87,33,422/-, the appellant has claimed depreciation of Rs.3,94,56,239/-

i.e. 15.86% as against the allowable rate of 7.5%. Thus the allowable depreciation on block of assets plant and machinery is Rs.1,86.55,007/- only Thus, the total allowable depreciation will be Rs.2,52,01,910/- as against claim of Rs.4,60,03,142/-. Accordingly, it is held that the depreciation is allowable to the appellant But in view of the above the AO is directed to allow depreciation amounting to Rs.2,52,01,910/- only. For statistical purpose the ground of appeal may be treated as "Partly Allowed".

6. The ld. Counsel for the assessee while impugning the orders of the Revenue Authority contended that basically he has no dispute for restriction of the depreciation *qua* 180 days, but both the authorities have not appreciated the contention of the assessee. The assessee has claimed additional depreciation on certain items of machinery and not only the rate of depreciation as considered by the ld. 1st Appellate Authority in the impugned order. The ld. Counsel for the assessee has filed written submission before us, wherein he has pleaded as under:-

"1. Your honour's all the five grounds taken up by the appellant relates to restricting total depreciation allowed to Rs.2,52,01,910/- by C.I.T (A), NFAC as against total depreciation of Rs.4,60,03,142/- claimed by the Appellant. The relevant portion of C.I.T (A) order at para 7.3 is reproduced below-

"In the case of appellant, the depreciation has to be allowed @ 7.5% as the asset has been put to use for less than 180 days. Against purchase value of asset of Rs. 24,87,33,422/-, the appellant has claimed depreciation of Rs. 3,94,56,239/- i.e. 15.86% as against the allowable rate of 7.5%. Thus the allowable depreciation on block of assets plant and machinery is Rs. 1,86,55,007/- only. Thus, the total allowable depreciation will be Rs. 2,52.01,910/- as against claim of Rs.4,60,03,142/-. Accordingly, it is held that the depreciation is allowable to the appellant. But in view of the above the AO is directed to allow depreciation amounting to Rs.2.52,01,910/- only. "

2. Your honour's the Ld. CIT(A) has misunderstood that appellant has claimed depreciation of Rs.3,94.56,239/- @ 15.86% on Plant and Machinery(P/M). This is not the case, as depreciation claimed under Income Tax Act, 1961 of Rs.3,94,56,239/- as mentioned in the tax audit report (Form 3CD), is aggregate of normal depreciation allowable u/s 32(1) of the Act and additional depreciation allowable u/s 32(l)(iia) of the Act.

3. Your honour's during the year, total addition in Block of Fixed Assets carrying depreciation rate @ 15% was Rs.24,87,33,422/-, out of which Fixed Asset eligible for additional depreciation being plant & machinery installed is Rs.20,80,12,326/-.

Accordingly, depreciation allowable for the year under Income Tax Act, 1961 as reported in Form 3CD was computed as follows -

Normal Depreciation u/s 32(1) @ 7.5% - Rs 1,86,55,006
Additional Depreciation u/s 32(l)(iia) @ 10% - Rs.2,08,01,233
Rs.3,94,56,239

Calculation of Depreciation claimed as per Form 3CD is summarised below for your honour's reference - Copy of Form 3CD is enclosed as Annexure-1

Block of Asset	Rate	Additions during the year		Addition eligible for Additional Depreciation	Depreciation	Additional Depreciation	Total Depreciation
		More than 180 days	Less than 180 days				
Block 1	15%		24,87,33,422	20,80,12,326	1,86,55,006	2,08,01,233	3,94,56,239
Block 2	60%		2,90,736		87,221		87,221
Block 3	10%		50,000		2,500		2,500
Block 4	10%		12,91,43,639		64,57,182		64,57,182
TOTAL			37,82,17,797	20,80,12,326	2,52,01,909	2,08,01,233	4,60,03,142

It is pertinent to point out that, additional depreciation of Rs.2,08,01,233/- claimed is separately shown in the return of income filed for the year under Schedule DPM at page no. 16. Copy of same is enclosed as Annexure - 2.

4. Your honour's in support of our claim for additional depreciation, your kind attention is drawn to the provisions of section 32(l)(iia), which are -

"32(1) (Ha) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):"

Your attention is also drawn to the second proviso and third proviso to section 32(1)

"Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this

subsection in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for cm asset under clause (i) or clause (ii) or clause (iia), as the case may be:

Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset:

Your Honour's would appreciate that, at para 3.1 of our written submission filed before CIT(A), NFAC, during first appellate proceedings, we have categorically mentioned the above facts that appellant has claimed depreciation of Rs.2,52,01,909/- u/s 32(1) on all depreciable assets and additional depreciation of Rs.2,08,01,233/- u/s 32(l)(iia) on plant and machinery acquired and put to use during the year and therefore the same should be allowed as claimed. Copy of written submission filed is enclosed as Annexure-3.

5. However the Ld. CIT(A) without specifying any reasons and also without granting an opportunity of being heard has not allowed claim for additional depreciation of Rs.2,08,01.233/- u/s 32(l)(iia) of the Income Tax Act,1961.

6. We request your Honour's to kindly allow the appeal as claim for depreciation is as per the Income Tax Act, 1961.

Thanking you
Yours faithfully
For General Polytex Pvt Ltd
Sd/-
M K Patawari, FCA
(A/R)

7. The ld. D.R., on the other hand, contended that there is no discussion either in the assessment order or in the ld. 1st Appellate Authority's order about this claim of additional depreciation. He, therefore, relied upon the orders of revenue authorities.

8. We have duly considered the rival contentions and gone through the record carefully. According to the ld. Counsel for the assessee, the grievance of the assessee relates to denial of additional depreciation. It is pertinent to note that this issue is neither discernable from the order of the ld. Assessing Officer nor from the finding of the ld. CIT(Appeals.) We have extracted the finding of both the authorities in the earlier part of this order and perusal of the relevant finding it would reveal that this aspect has not been discussed by the authorities below. For claiming additional depreciation under section 32(1)(ia), assessee is required to fulfill certain conditions, namely nature of machinery, when it was installed etc. This claim of the assessee is further required to be cross verified by the ld. Assessing Officer. Therefore, in the absence of such discussions, the Tribunal cannot adjudicate this issue. Therefore, we deem it appropriate to remit this issue to the file of ld. Assessing Officer, who will re-adjudicate whether assessee is entitled for additional depreciation under section 32(1)(ia) of the Income Tax Act or not. The assessee will be at liberty to submit any further details before the Assessing Officer in support of his claim. In view of the above, both the orders are set aside and the issue is restored to the file of ld. Assessing Officer for re-adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th March, 2023.

Sd/-	Sd/-
(Manish Borad)	(Rajpal Yadav)
Accountant Member	Vice-President (KZ)

Kolkata, the 16th day of March, 2023

*Copies to : (1) M/s. General Polytex Pvt. Limited,
0/2171-72, Malvini Wadi,
Sonifalia, Bhagatalav,
Gujarat-395003*

*(2) Income Tax Officer,
Ward-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069*

*(3) CIT(Appeals), NFAC, Delhi;
(4) Commissioner of Income Tax- , Kolkata;
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.