

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र)एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 694/Kol/2022
Assessment Year: 2011-12

Dozco Infratech Pvt. Ltd. (PAN: AACCD 3819 M)	Vs.	DCIT, Circle-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.02.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	15.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri Amit Agarwal, Advocate
For the Respondent/ राजस्व की ओर से	Shri G. Hukugha Sema, CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 25.11.2022 for the AY 2011-12.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) upholding the order passed by the AO wherein the AO has made disallowance of depreciation by applying the rate of depreciation @ 15% on excavator, bulldozer etc.

as against 30% claimed by the assessee resulting into confirmation of depreciation disallowance of Rs. 2,84,94,532/-.

3. At the outset, the Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case in the earlier year namely DCIT vs. M/s Dozco Infratech Pvt. Ltd. in ITA NO. 1438/Kol/2018 for AY 2010-11 dated 21.10.2020 wherein the Co-ordinate Bench has allowed the depreciation on bulldozer, excavator @ 30%. The Ld. Counsel therefore prayed that in the present appeal may kindly be allowed by setting aside the order of Ld. CIT(A) and directing the AO to allow the depreciation @30% by following the decision of the Tribunal in the earlier year.

4. Facts in brief are that the assessment in this case was framed originally u/s 143(3) of the Act dated 19.03.2014 accepting and allowing depreciation @ 30% on bulldozer, excavator etc. The assessee is engaged in the business of leasing out of plant and machinery. The excavators and bulldozers were capitalized under the head plant and machinery and depreciation @ 30% was claimed.

5. The Ld. PCIT upon perusal of the said order came to the conclusion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue for the reason excavators and bulldozers were allowed depreciation @30% and thus revised the order on 28.12.2016 passed u/s 263 of the Act. Thereafter in the set aside assessment proceedings, the AO disallowed excess depreciation of Rs. 2,84,93,532/- by applying @15% of the present block of plant and machinery consisting bulldozers and excavators. The assessee has challenged the said order before the Ld. CIT(A). It is pertinent to note that the assessee has not challenged the revisionary order passed by the Ld. PCIT u/s 263 of the Act.

6. After hearing the rival contentions and perusing the material on record, after consulting the provisions of the Act qua rate of depreciation, we observe that the rate of depreciation as admissible under the Act in respect of excavator, bulldozer is

provided @ 30%. Moreover the issue has been decided by the Co-ordinate Bench in the earlier year in assessee's own case in ITA No. 1438/Kol/2018 (supra) wherein rate of depreciation has been allowed @ 30%. The relevant portion of the said order is extracted below:

“5. We find no merit in the Revenue's sole substantive grievance. It has come on record that the CIT(A) has gone by the hon'ble jurisdictional high court's decision (supra) to hold that all the above stated three categories of the corresponding plant and machinery items i.e. excavators, bull dozers and wheel loaders carry depreciation relief of @ 30% than @ 15% canvassed at the Revenue's behest. Learned authorized representative further pin-pointed the fact that this tribunal's decision in Bothra Shipping Services (supra) had also followed CIT vs. Gaylord Construction 190 Taxmann.com 406 (Kerala) & Gujco Carriers vs. CIT 250 ITR 50 (Guj) deciding the similar issue against the department. We hold in this factual backdrop that the CIT(A)'s lower appellate discussion granting higher rate of depreciation @ 30% in case of foregoing three categories of machinery thereby treating them akin to “Motor Lorries” under the Motor Vehicles Act & Rules; are liable to be affirmed. We order accordingly.”

Considering the facts of case being fully covered by the decision of the Co-ordinate Bench, we are inclined to quash the order of Ld. PCIT as the assessment framed is neither erroneous nor prejudicial to the interest of the revenue.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 15th March, 2023

Sd/-
(Rajpal Yadav / राजपाल यादव)
Vice-President / उपाध्यक्ष

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 15th March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dozco Infratech Pvt. Ltd., 6, Waterloo Street, 3rd Floor, Kolkata-700069.
2. Respondent – DCIT, Circle-1(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata