

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**180/Jodh/2019**  
(ASSESSMENT YEAR- 2015-16)

M/s. Harmony Plastics Pvt Ltd. F-335-339, Bhamashah Industrial Area, Kaladwas, Udaipur <b>(Appellant)</b>	V s	The ACIT Circle-1 Uddaipur <b>(Respondent)</b>
<b>PAN NO. AABCH 5399 D</b>		

<b>Assessee By</b>	Shri Amit Kohtari, CA
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	20/03/2023
<b>Date of Pronouncement</b>	21 /03/2023

**ORDER**

**PER: SHRI MANISH BORAD, AM**

This is an appeal filed by the assessee against the order of the Id. CIT(A)-1, Udaipur dated 15-02-2019 for the assessment year 2015-16 raising therein solitary ground of appeal as under:-.

“1. That on the facts and in the present circumstances of the case Id. CIT(A) has erred in law

in confirming disallowance of allowance of balance 50% additional depreciation on new plant & Machinery purchased and put to use during the IInd Half of A.Y. 2014-15 on the alleged ground that in terms of clause (iia) of Section 32(1), addl. Depreciation is available in year in which machinery is new and first put to use and not for any succeeding year. Further, carry forward of additional dep. Is substituted by the Finance Act, 2015 w.e.f. 01-04-2016 and is applicable from A.Y. 2016-17 onwards without considering the fact that position is clarified by amendment effected from 1st April 2016 which being clarificatory in nature applied retrospectively and case of High Courts of Madras, CIT vs T.P. Textiles Pvt. Ltd. (2017) 246 Taxman 324 (Mad.)”

2.1 Brief facts of the case are that assessee company is engaged in the manufacture and export of PP Laminated Fabric and HDPE Bags. The assessee company filed its return of income on 28-11-2015 declaring total income of Rs.9,31,44,840/-. The case of the assessee company was selected for scrutiny and the AO completed te assessment u/s 143(3) determining total income at Rs.9,53,25,990/- by disallowing additional depreciation of Rs.21,81,146/-.

2.2 Being aggrieved, the assessee carried the matter before the Id. CIT(A) who confirmed the disallowance so made by the AO and thus dismissed the appeal of the assessee by observing as under:-

‘6. I have carefully considered the assessment order, appellate submissions and various case laws relied upon by the appellant. The relevant provisions of Section 32(1)(iia) of the Act have also been gone through. The AO disallowed the claim of the appellant for additional depreciation on the ground that the provisions of Section 32(1)(iia) of the Act under which the appellant had claimed the carry forward of additional depreciation are substituted by the Finance Act, 2015 w.e.f. 01-04-2016 and are applicable from assessment year 2016-17 onwards. The instant assessment year being 2015-16, the proviso inserted in Section 32 of the Act was not applicable as the amendments made was not with retrospective effect. The case laws cited by the appellant relate to the eligibility of power generation companies for claiming additional depreciation on new plant and machinery and the issue involved therein different from the issue raised in the present appeal. In this connection, the Hon’ble Chennai ITAT in the case of CRI Pumps (P) Ltd. Vs ACIT [2013] 34 taxmann.com 123 (Chennai-Trib) held that in terms of clause (iia) of Section 32(1), additional depreciation is available in year in which machinery is new and first put to use and not for any succeeding year. The facts of this case were that the assessee had claimed additional depreciation on certain machinery other than those were acquired during the relevant previous year. The Assessing Officer opined that since additional depreciation on the machinery was allowed in the assessment years relevant to the previous year when it was installed, there was no question of any further additional depreciation being granted in any of the subsequent years, including the impugned assessment year. Accordingly, the assessee’s claim was rejected. The Commissioner (Appeals) confirmed the order of Assessing Officer. On further, appeal the Hon’ble ITAT held as under:-

There is no dispute that the additional depreciation claimed by the assessee, for impugned assessment year, were on machinery already acquired during the earlier assessment years. Thus in the relevant year, the machinery were no more new. Claim of the assessee is that under section 32(2)(ia), additional depreciation for new plant and machinery acquired were available in every year after installation if such installation happened after 31-03-2005 (para 8).

First requirement for being eligible for the claim of additional depreciation is that it should be on a new machinery or plant. A machinery is new only when it is first put to use. Once, it is used, it is no longer a new machinery. Admittedly, the machinery on which additional depreciation has been claimed, was already used in various preceding previous years. Therefore, for the impugned assessment year, it is no more a new machinery or plant. Once, it is not a new machinery or plant, assessee's claim under section 32(1)(ia) cannot be allowed.

Additional depreciation itself is only for a new machinery or plant. A claim of additional depreciation as made by the assessee, if allowed, will not be an allowance for a new machinery or plant. Intention of the Legislature was to give such additional depreciation in the year in which assets put to use and not for any succeeding year.

There is nothing in the statute which allows such claim of additional depreciation every year on machinery acquired in earlier year. There cannot be any presumption that unless a claim is specifically denied, it has to be allowed (para 9)

When an allowance which is ordinarily not available under normal commercial principles of accounting, is made specifically allowable through enactment of certain specific provisions of the Act, it is also a requirement that there should be similar specific provision which shows its applicability every year, unless the context strongly calls for such an interpretation. Thus, the Commissioner (Appeals) was justified in confirming the disallowance of additional depreciation (para 10)

Considering the factual and legal position as discussed above, it is held that the AO is perfectly justified in disallowing the claim of additional depreciation of Rs.21,81,146/-, the disallowance made is confirmed. This ground of appeal is dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee prayed that the lower authorities have erred in disallowing the claim of additional depreciation of Rs.21,81,146/-. He further submitted that the asset so declared is not under dispute and the assessee claimed that the balance 50% of additional depreciation which was not allowed to assessee for putting the machinery to use for less than 180 days in the year of purchase, was allowable in the succeeding year. To this effect, the ld. AR of the assessee relied upon the following case laws.

1. CIT and another vs Rittal India Private Ltd. (2016) 282 CTR 431 (Kar.)

2. CIT vs T.P. Textile (P) Ltd. (2017) 246 Taxman 324  
(Mad)

2.4 On the other hand, the ld. DR supported the order of the ld.CIT(A).

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO had disallowed additional depreciation of Rs.21,81,146/- u/s 32(1)(ia) of the Act which has been confirmed by the ld. CIT(A). The ld. AR of the assessee submitted that the assessee had claimed disallowance of balance 50% additional depreciation on new Plant & Machinery purchased and installed during the IInd half of A.Y. 2014-15 and depreciation claimed @ 10% of Rs.21,81,146/-. The ld. AR of the assessee further submitted that allowance of balance 50% of the additional on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery shall be allowed in the immediately succeeding previous year. The decision relied on by the ld AR of the assessee in the case of CIT vs T.P. Textiles (P) Ltd (Mad. High Court) and CIT and another vs Rittal India Private Ltd.

(Karnatka High Court), supra are fully applicable in the case of the assessee which is reproduced as under:-

“The plain language of Section 32(1)(ia) read alongwith the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10 per cent of additional depreciation in the succeeding assessment year. As a matter of fact, w.e.f. Ist April, 2016, the ambiguity, if any, in this regard, in the mind of the AO, stands removed by virtue of legislature, incorporating in the statute, the necessary clarificatory amendment. A perusal of the extract of the memorandum explaining the amendment relied upon would lead to discrimination, in respect of plant and machinery which was used for less than 180 days, against that, which was used for 180 days or more. The amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. Even upon a plain reading of the unamended provision, it could not be said that the assessee could not claim balance depreciation in the assessment year, which follows the assessment year, in which the machinery had been brought and used, albeit, for less than 180 days – CIT vs Rittal India (P) Ltd. (2016), 282 CTR 431: (2016) 129 TR (Kar) 153: (2016) 66 taxmann.com 4 (Kar) connected with:

Conclusion: - Balance 50 per cent of additional depreciation which was not allowed to assessee for putting the machinery to use for less than 180 days in the year of purchase, was allowable in the succeeding assessment year.”

In view of the above deliberation and also the cases cited by the assessee in the case of CIT vs T.P. Textiles (P) Ltd (Mad. High Court), and CIT and another vs Rittal India Private Ltd. (Karnataka High Court), (supra), we do not concur with the findings of the ld CIT(A). Thus the appeal of the assessee is allowed.

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

Order pronounced in the open Court on  
21/03/2023.

Sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Dated : 21 /03/2023

*\*Mishra*

Copy to:

1. The Appellant`
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar

Jodhpur Bench