

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘F’: NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON’BLE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 3762/DEL/2015
Assessment Year: 2010-11**

Pramod Kumar Saxena, Pakka Katra, Chandausi, Moradabad. PAN- ACLPS9972N	<u>Vs</u>	ACIT, Circle-II, Moradabad.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. Akhilesh Gupta, Sr. DR	
Date of hearing	11.04.2023	
Date of pronouncement	04.05.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 20.02.2015 passed by the Principal Commissioner of Income Tax (OSD) (Appeals), Moradabad (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. 1366/ACIT-II/Moradabad/2012-13, for the assessment year 2010-11, arising out of the assessment order dated 26.07.2012 u/s 143(3) of the Income-tax

Act, 1961 (hereinafter referred as the “Act”), passed by the Assistant Commissioner of Income Tax, Circle-II, Moradabad (hereinafter referred in short as “Ld. AO”).

2. Heard and perused the record.

3. At the hearing no one attended for the assessee inspite of notices being issued repeatedly. The learned DR was heard, who supported the finding of tax authorities below. Written submissions of appellant received by post are also taken into consideration.

4. Appreciating the material on record it can be observed that the assessee is in appeal raising following grounds:

“1. That the order of hon 'able CIT is arbitrary and unjust

2. That captioned paver finishers have been put to use on 1.10.09

3. That various court has held that ever an asset was ready for use Depreciation shall be allowed.

4. That the appellant reserves the right to Add to and / or Amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”

5. It can be appreciated that for A.Y. 2010-11 the assessee filed its return of income on 15.10.2010 declaring total income at Rs. 91,25,670/-. Subsequently the assessee revised its return by declaring total income at Rs. 69,99,820/-. The return

was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny. The Ld. AO completed the assessment u/s 143(3) of the Act at an income of Rs. 80,54,030/- by making various additions/ disallowances. In appeal the Ld. Principal Commissioner of Income Tax (OSD) (Appeals), Moradabad partly allowed the appeal, however, sustained the action of the Ld. AO in restricting the depreciation on Power Finisher @ 7.5% as against 15% claimed by the assessee, inter alia, by observing as under:

“ Now coming to the disallowance of depreciation it is seen that the Power Finisher was purchased vide invoice no. 280 dated 30.9.2009 279 dated 30.9.2009 and 421 dated 19.12.2009 from Jugudan. The claim of the appellant before the AO was that these were put to use on 30.9.2009 was not accepted by the AO. One bill dated 09.12.2009 itself states the position. In appeal the appellant's submission is that;

"2 bills of power finishers is dt 30.9.09. Even if we assume that these power finishers are put to use on 1.10.09, still there left 181 days, which are more than 180 days,"

To my mind the claim of depreciation is based on the actual use of machinery and there is no law to assume the use of machinery. The appellant has not put any material evidence to suggest that there were in fact put to use on 1.10.2009 either before the AO or in appeal. In these circumstances of the case, the action of the assessing officer in allowing depreciation at 7.5% deserves no interference. The appeal on this count of the assessee/ appellant fails.”

6. The Bench is of the considered opinion that on the issue under appeal there is no error in the findings of learned tax authorities below. The use of machinery is a question of fact and can be established by evidences in the form use of raw

material or others costs incurred. No such evidence was produced at any stage. The grounds raised have no substance and **the appeal is dismissed.**

Order pronounced in open court on 04.05.2023.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI