

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3568/Mum/2019
(Assessment Year: 2013-14)

ACIT 3(2)(1) Mumbai	Vs.	M/s. Mukand Sumi Metal Processing Limited 3 rd Floor, Bajaj Bhawan, Jamanalal Bajaj Marg, Nariman Point, Mumbai-400 005
PAN/GIR No. AAECT 3291 P		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Soumen Adak & Shri Ashish Jhawae
Revenue by	:	Smt. Mahita Nair
Date of Hearing	:	09.03.2023
Date of Pronouncement	:	02.06.2023

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The Revenue has challenged the Id. CIT(A)'s order deleting the disallowance of depreciation amounting to Rs.3,47,14,889/-. The brief facts of the case are that the assessee company is engaged in the manufacturing of bright bars and wires in India incorporated in 01.08.2012. The assessee company is also the joint venture of Mukand

Limited, India and Sumitomo Corporation, Japan. It is observed that one of the business divisions namely 'Cold Finished Bars and Wires' of Mukand Limited which was manufacturing Bright Bars and Wires was merged with the assessee company on 30.09.2012. The assessee is said to have entered into a master agreement dated 29.10.2012 between Mukand Limited and joint venture partner, i.e., Sumitomo Corporation, Japan and Sumitomo Corporation Asia Pte Ltd., Singapore (herein after jointly referred as 'Sumitomo Corporation') with the principle objectives of the Master Agreement as per para 3 is specified hereunder:

- Recording the intention of the Parties that Mukand Ltd. shall effectively transfer the Assets to the appellant with the objective of the appellant undertaking the business.
- Recording their inter-se rights and obligations as shareholders of the appellant.
- Recoding their terms and conditions of subscription by Sumitomo to the Sumitomo shares and subscription by Mukand to the Mukand shares;
- Recording the understanding between the parties in relation to the expansion of the business of the appellant.
- Conducting the activities of the appellant so as to maximize overall value for the shareholders.

3. The assessee is said to have purchased plant and machinery amounting to Rs.23,14,32,594/- dated 20.09.2012 from Mukand Limited on acquisition and since the manufacturing activities could not be carried out immediately, the assessee is said to have leased the said machineries from 01.10.2012 to Mukand Limited as per agreement to lease dated 12.01.2013 and the said income was offered to tax as business income. The assessee had claimed depreciation for full year as per the market rate, as the machineries were put to use from 01.10.2012 and had claimed depreciation amounting to Rs.3,47,14,889/-. The A.O. disallowed the claim of the depreciation for the reason that no business activity of manufacturing or production was carried out and that the

Memorandum of Article of Association does not show any business activity of hiring business and that there was no commencement of business during the year as per joint venture agreement. The A.O. held that there was no regular manufacturing activity carried out by the assessee company on perusal of the excise returns and that the transaction was merely an internal arrangement between the two associate companies for the purpose of claiming depreciation against the leased income. The A.O. thereby rejected the claim of the depreciation amounting to Rs.3,47,14,889/-.

4. In an appeal filed by the assessee, the Id. CIT(A) allowed the claim of depreciation of the assessee. The Id. CIT(A) by placing reliance on the decision of the Hon'ble Apex Court in the case of *I.C.D.S Ltd. vs. CIT, Mysore* [2013] 29 taxmann.com 129 (SC) and various other decisions held that the assessee has fulfilled both the conditions laid down u/s. 32 of the Act and that the assessee has shown higher lease rent than the depreciation claimed in which case the Revenue is at no loss. The Id. CIT(A) further held that the lease rent continues to be charged at the gross value of the plant and machinery but the depreciation is charged at the reducing written down value every year. The Id. CIT(A) allowed the claim of the depreciation made by the assessee.

5. The Revenue is in appeal before us.

6. The learned Authorised Representative (Id. AR for short) for the assessee contended that as per section 32 of the Act if any plant and machinery owned wholly or partly and used for the purpose of business or profession, the assessee can claim depreciation at such percentage on the written down value. The Id. AR further stated that the assessee company falls under the provisions of section 32 as a twin conditions are

satisfied. The ld. AR for the assessee relied on the various decisions for the said propositions.

7. The learned Departmental Representative (ld. DR for short) for the Revenue has placed reliance on the decision of the Hon'ble Apex Court in the case of *Shakti Metal Deport vs. CIT* [2021] 436 ITR 1 (SC) which is distinguishable on facts of the present case. The ld. DR relied on the order of the A.O.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee company was previously known as Technosys Metal Processing Pvt. Ltd. and subsequently changed to Mukand Sumi Metal Processing Ltd. dated 13.12.2012 and had entered into a joint venture with Mukand Ltd., Sumi Moto Corporation, vide a Master Agreement dated 29.10.2012 for the purpose of manufacturing of bright bars and wires in India. It is observed that at the time of acquisition, the assessee company had purchased plant and machinery from Mukand Ltd. which were again leased back to Mukand Ltd. vide agreement dated 12.01.2013. The assessee has also submitted that even the erstwhile company vide an agreement dated 01.10.2012 had leased the plant and machinery to M/s. Mukand Ltd. and since the time of purchase of machineries from Mukand Ltd. on 30.09.2012, the said plant and machinery were leased back to Mukand Ltd. since 01.10.2012. The assessee has further stated that as per the Memorandum and Articles of Association, the assessee was also engaged in the business of hiring to further substantiate its claim. The A.O. disallowed the depreciation claimed by the assessee for the reason that the hiring of plant and machinery was an internal arrangement between the two associated companies for the benefit of claiming

depreciation. The A.O. further held that the business activity as per the joint venture had not commenced and carried out during the impugned year and that no manufacturing activity was found to have been carried out by the assessee, thereby rejecting the claim of the depreciation. The A.O. also rejected the alternate claim of the assessee in allowing atleast 50% of the depreciation on the eligible rate claimed by the assessee for the above mentioned reasons. The Id. CIT(A), on the other hand, allowed the claim of depreciation of the assessee on the ground that the A.O. has not disputed the fact that the transaction was genuine. The Id. CIT(A) further held that the mere internal arrangement for the purpose of getting tax benefit cannot be said to be a sham transaction and had relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Punjab State Electricity Board* [2009] 183 taxmann.com 419 (P & H) which held that the arrangement of affairs by the assessee to reduce the tax liability without violating the law as per the proposition laid down in *Union of India vs. Azadi Bachao Andolan* [2003] 263 ITR 706 (SC) case by the Hon'ble Apex Court was held to be valid. The Id. CIT(A) further held that the lease rent offered by the assessee was higher than the depreciation claimed by atleast 3% and, hence, there was no loss of revenue. From the above observation, we are of the considered view that similar issue has been dealt with by the Hon'ble Apex Court in the case of *K. M. Sugar Mills Ltd. vs. CIT* [2015 373 ITR 42 (SC)], wherein it was held that sale and leased back transaction was recognized for the purpose of claiming depreciation provided the twin condition of section 32 of the Act where the ownership and the use of the assets for business purpose was proved then the assessee was entitled to claim the depreciation. The assessee has also placed reliance on the decision of the Hon'ble Supreme Court in the case of *I.C.D.S Ltd. vs. CIT* [2013] 350 ITR

327 (SC) along with the other decisions which has reiterated the proposition that the assessee is the owner of the machineries and had given the same on lease where the lease rent was also offered to tax. The assessee was eligible to claim depreciation on the said plant and machinery at 15%. It is pertinent to point out that the A.O. in the present case has not disputed the transaction of purchase and sale of plant and machinery and, hence, the first condition of section 32 of the Act stipulating that ownership should be proved was satisfied by the assessee. The second condition emphasizing that it has to be put to use for the purpose of the business of the assessee has also been substantiated by the assessee vide the hiring agreement entered into by the assessee and M/s. Mukand Ltd. and further the lease rent offered was taxed by the A.O. as offered by the assessee as 'business income'.

9. From the above observation, we are of the considered view that the Id. CIT(A) has rightly allowed the depreciation on plant and machinery as per section 32(1) of the Act and, hence, we find no infirmity in the order of the Id. CIT(A). Therefore, the grounds raised by the Revenue are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 02.06.2023.

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 02.06.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai