

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER

ITA No.291/RJT/2019
Assessment Year :2014-15

ACIT, Cir.1 Rajkot.	Vs.	M/s.Ravi Techno Forge P. Ltd. Plot No.7/8, Survey No.211 Veraval Shapar Ind. Area Rajkot Gondal Highway, Tal. KotdaSangani Dist. Rajkot. PAN : AADCS 1608 N
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assesseeby :	Shri Mehul Ranpura, Id.AR
Revenue by :	Shri B.D. Gupta, Id.SR.DR

सुनवाई की तारीख/**Date of Hearing** : **10/04/2023**
घोषणा की तारीख /**Date of Pronouncement**: **16/06/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the Revenue against order of the Id.Commissioner of Income-tax (Appeals)-2, Rajkot [hereinafter referred to as "the Id.CIT(A)"] dated 25.9.2019 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst.Year2014-15.

2. The grounds raised in the appeal are as under:

"1. The learned CIT(A)-2, Rajkot has erred in law and on facts in deleting the additions made on account of disallowance of additional depreciation u/s 32(l)(iia) of the Income Tax Act, 1961.

2. *On legal and factual status of the case, the learned CIT(A)-2, Rajkot ought to have upheld the order of the Assessing Officer.”*

3. As is evident from the grounds, sole grievance of the Revenue against the order of the Ld.CIT(A) relates to allowance of claim of additional depreciation to the assessee under section 32(1)(iia) of the Act.

4. The facts as emerge from order of the ld.CIT(A) are that the assessee had claimed additional depreciation of assets acquired and installed during preceding assessment year i.e. Asst.Year.2013-14 of Rs.58.95 crores, out of which machinery of Rs.29.84 crores was installed and put to use for less than 180 days. The assessee had claimed additional depreciation in the said preceding year at the rate of 10% i.e.50% of the allowable depreciation rate of 20%, and the balance of additional depreciation of 10% was claimed by the assessee in the impugned Asst.Year 2014-15. The AO denied the claim of balance additional depreciation holding that 20% additional depreciation was allowable only in the assessment year in which the machinery was purchased and the balance claim of additional depreciation could not be allowed in the subsequent year. The assessee contended that it had put to use the machinery for a period of less than 180 days in the year of acquisition and accordingly, as per the law it was allowed and had claimed only 50% of the allowable deprecation, while the balance depreciation was claimed in the impugned year. The AO rejected the claim of the assessee. The ld.CIT(A) however held that since the assessee is entitled to additional depreciation at the rate of 20% and since in the preceding year, when the assets were acquired, they were put to use for a period of less than 180 days, it was eligible to claim only 50%

additional depreciation in the year of acquisition of assets and its total entitlement of the additional depreciation being at the rate of 20%, the same was allowable in the subsequent year, and could not be restricted for the reason that entire additional depreciation was to be allowed only in the year of acquisition of the asset. In this regard, he relied upon the decision of the Mumbai Bench in the case of Everest Industries Ltd. Vs. JCIT, ITA No.3804/Mum/2015 vide order dated 31.1.2018. Finding of the Ld.CIT(A) in this regard at para 6.2 of the order is as under:

“The brief fact of the case are that assessee had claimed additional depreciation on the asset acquired and installed during F.Y. 12-13 of Rs.58,95,74,044/- out of which machinery of Rs.29,84,54,439/- were installed and put to use for less than 180 days. The assessee claimed additional depreciation at the rate of 10% (being 50% of the allowable additional depreciation @20%). Balance additional' depreciation of 10% was claimed by assessee in A.Y. 14-15. The Assessing Officer has denied the claim of balance additional depreciation of 10% claimed in /the current assessment year holding that 20% depreciation was allowable only in the assessment year in which the machinery was purchased and the claim of the balance additional depreciation cannot be allowed in subsequent year. The assessee has contended that the total additional depreciation allowable to assessee was 20% but keeping in view the fact that the impugned machinery had been put to use for less than 180 days in the year of acquisition only 10% additional depreciation was claimed in first year and the balance 10% additional depreciation has been claimed in the subsequent assessment year which is under appeal. The assessee has also placed reliance upon decisions of ITAT Delhi in case of M/s Cosmos Films Ltd. [2012] 24 taxmann.com 189 and Sil Investment Limited [2012] 148 TTJ .213 (Del).

Having considered facts and circumstances of the case and rival contentions I find that it is uncontroverted that the assessee is entitled to 20% additional depreciation on the said machinery. In section 32(l)(iia), the allowable depreciation is 20%. The assessee claimed .10% additional depreciation in first year in view of provisio to section 32(l)(ii) to as machinery was put to use for less than 180 days and balance additional depreciation was claimed in the subsequent year.

In my considered opinion the approach of the assessee appears justifiable as total additional depreciation claimed does not exceed 20%.

ITAT Mumbai in case of Everest Industires Ltd, New Delhi vs JcitRg 1, Mumbai in I.T.A. No. 3804/Mum/2015 (Assessment Year 2009-10) and

I.T.A. No. 3849/Mum/2015 (Assessment Year 2009-10) Vide order dated 31.01.2018 has held that

26. The various decisions relied upon by the Id D.R, in our view, bring out the intention of the legislature that the additional depreciation prescribed u/s 32(l)(iia) is allowed only once, i.e., in the year in which machinery or plant is acquired and installed. Since the provisions of sec. 32(l)(iia) allowed a right to the assessee to claim additional depreciation, it was held in those decisions that the restriction placed under second proviso in allowing only 50% of the depreciation amount should not take away the right accrued to the assessee and accordingly it was held that the assessee is entitled to claim balance amount of additional depreciation in the succeeding year.

27. We notice that the amendment brought into sec. 32 by the Finance Act 2015 by inserting third proviso w.e.f. 1.4.2016 also supports our view. The newly inserted proviso reads as under-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 Everest Industries Limited 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:

The memorandum explaining Finance bill, 2015 has explained the purpose of the insertion of above said provisions as undergo encourage investment in plant or machinery by the manufacturing and power sector, additional depreciation of 20% of the cost of new plant or machinery acquired and installed is allowed under the existing provisions of section 32(l)(iia) of the Act over and above the general depreciation allowance. On the lines of allowability of general depreciation allowance, the second proviso to section 32(1) inter alia provides that the additional depreciation would be restricted to 50% when the new plant or machinery acquired and installed by the assessee, is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in the previous year. Non-availability of full 100% of additional depreciation for acquisition and installation of new plant or machinery in the second half of the year may motivate the assessee to defer such investment to the next year for availing full 100% of additional depreciation in the next year.

To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional deprecation 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."

In view of the above discussion, the Assessing Officer is directed to allow the claim of additional depreciation. The ground of appeal is allowed.”

5. We have gone through order of the Id.CIT(A) and we find that he has allowed the assessee's claim of additional depreciation following the decision of ITAT in the case of Everest Industries Ltd. (supra). We have gone through the said decision of the ITAT, and we have noted that the ITAT has held that the rate of additional depreciation allowable is 20% but by virtue of second proviso to section 32(1) if the assets were put to use for less than 180 days, the assessee is entitled to depreciation of 50% of the allowable rate. The ITAT held that this proviso restricting the rate of depreciation to 50% of the allowable rate cannot take away the right of the assessee to additional depreciation at the rate of 20% of the value of the assets and the ITAT further pointed out that to correct this mischief in the Statute an amendment was brought in by the Finance Act, 2015 allowing the balance depreciation, not allowed in the year of acquisition of the assets on account of proviso to section 32 of the Act, in the subsequent year.

6. The Id.DR was unable to distinguish the decision of the ITAT cited before us. His only contention was that the proviso allowing the benefit of the additional depreciation in the successive year was brought on the Statute only by the Finance Act, 2015 and was not applicable to earlier years, i.e it was prospective in operation, but we find that this aspect has also dealt with by the ITAT in its decision in the case of Everest Industries Ltd. (supra), wherein it was noted that in substance the amendment made by the Finance Act, 2015 was a curative amendment to cure the defect in the earlier provision

of the law which disentitled the assessee to full rate of additional depreciation at the rate of 20% where the assets were put to use for less than 180 days, though the clear intention of the Legislature was to provide them depreciation at the rate of 20% on addition of assets acquired, as incentive for acquiring and making investment in new plant & machinery. The ITAT held that the amendment was curative and thus had retrospective effect, and applied to earlier years also.

The Revenue therefore has no case and its basis of contesting the allowance of additional depreciation has, we find all been dealt with and dismissed by the ITAT in its decision in the case of Everest Industries Ltd. (supra).

7. In view of the above, we see no reason to interfere in the order of the Id.CIT(A) who has rightly allowed additional depreciation of 10% in the impugned year.

Ground of appeal of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 16th June, 2023 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 16/06/2023

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