

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 262/Kol/2021
Assessment Year : 2012-13

DCIT, Circle-11(1), Kolkata	Vs	Tirupati Sugars Ltd.
	.	PAN: AAACH 7896 Q
Appellant		Respondent

Date of Hearing	15.05.2023
Date of Pronouncement	28.07.2023
For the Assessee	Shri Rakesh Garg, AR
For the Revenue	Smt. Ranu Biswas, Addl. CIT, DR

ORDER

PER MANISH BORAD, AM:

The present appeal has been preferred by the Revenue for the assessment year 2012-13 against the order dated 19.08.2020 of the Commissioner of Income Tax(Appeals)-4, Kolkata (hereinafter referred to as the 'CIT(A)').

2. The Registry has pointed out that there is a delay of 212 (two hundred twelve) days in filing the present appeal before the Tribunal. The date of service or communication of the order against which the instant appeal is filed, was 30/07/2021, which falls within the period of pandemic of Covid-19. Petition for condonation of delay is placed on record by revenue explaining the reasons for delay, owing to Pandemic of Covid-19 during that time. It is noted that the period of delay falls during the time of Pandemic of Covid-19 which has been excluded by the Hon'ble Supreme Court in the case of suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. In view thereof, we condone the delay and proceed to admit the appeal for hearing.

3. Brief facts of the case are that the assessee is limited company engaged in manufacturing of sugar and its by-product. Current year loss of Rs. 9,81,23,206/- declared in the return of income filed for assessment year 2012-13 on 27.09.2012. The case selected for scrutiny through CASS followed by serving of statutory notice u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings, the ld. AO examined the assessee's claim for additional depreciation u/s 32(1)(ia) at Rs. 2,39,90,900/- claimed on the purchase of turbine used for generating the power and thereafter placed within Co-generation System with Pressure Boiler . The claim of the assessee is that the generation of power is a manufacturing activity and, therefore, eligible for additional depreciation. On the other hand, ld. AO was of the considered view that the specific amendment has been brought in section 32(1)(ia) of the Act on 01.04.2013 and onwards by way of including the business of generation and distribution of power and therefore, the assessee is not entitled for the said claim of additional depreciation.

4. The second issue examined by the ld. AO is regarding additional depreciation of Rs. 1,36,77,373/- claimed on the amount spent on expansion and modification of sulphur bhatty, sugar grade etc. As per the assessee, the said addition to the fixed asset is eligible for additional depreciation. However, ld. AO was of the view that it is not a new plant and machinery as it is on account of modification of existing new plant & ancillary machinery. The ld. AO along with denying the claim of additional depreciation as discussed also made certain other additions and assessed the total loss of Rs. 5,91,53,237/-.

5. Aggrieved, the assessee preferred an appeal before the ld. CIT(A) and succeeded of all the major issued.

6. Aggrieved, revenue is now in appeal before this Tribunal regarding following grounds of appeal:

1. *That on the facts and circumstances of the case and in law, ld. CIT(A)-4, Kolkata has erred in allowing the benefits of additional depreciation of Rs. 2,39,90,900/- u/s 32(1)(iia) of the Income Tax Act, 1961 on purchase of Turbines (used for power generation) to the assessee, who is engaged in the manufacturing of sugar and allied products.*

2. *That on the facts and circumstances of the case, ld. CIT(A)-4, Kolkata has erred in allowing the retrospective benefits of amendments brought into the provisions of the section 32(1)(iia) of the Act to the assessee which has come into effect on 01.04.2013.*

3. *That on the facts and circumstances of the case, ld. CIT(a)-4, Kolkata has erred by allowing the benefits of additional depreciation of Rs. 1,36,77,373/- u/s 32(1)(iia) of the Income Tax Act, 1961 on purchase of ancillary machineries for modification of existing set up of plants on a premise that the said machineries were purchased for expansion of existing set up of machineries.*

4. *That the appellant craves leave to add and/or alter, amend, modify or rescind the grounds herein above before or hearing of this appeal.”*

7. Ld. departmental representative vehemently argued supporting the order of Assessing Officer. On the other hand, ld. counsel for the assessee placing heavy reliance on the ld. CIT(A) also took us brief synopsis filed on 10.01.2023.

8. We have heard rival contention and perused the records placed before us. The first effect issue for our consideration is regarding additional depreciation on turbine at Rs. 2,39,90,900/-. The said claim has been made by the assessee towards additional depreciation on the plant & machinery installed and put to use on 01.12.2011 under Co-generation System with power boiler to generate the power which is used by the Sugar Unit for captive consumption during the period 01.12.2011 to 31.03.2012. Since the said assets were put to

use for 180 days during the year, therefore, fifty percent of the additional depreciation of 20% i.e. 10% has been claimed on the total value of plant & machinery. The only ground for rejection of the claim by the Assessing Officer is that specific amendment has been made by the Finance Act, 2012 which is effective from 01.04.2013 post which business of generation or generation and distribution of power has been included in section 32(1)(iia) of the Act. The ld. AO has also observed that prior to 01.04.2013 manufacturing of power is not covered under the provisions of section 32(1)(iia). Before us, ld. counsel for the assessee has stated that ever prior to the amendment made by Finance Act, 2012, additional depreciation is allowable u/s 32(1)(iia) of the Act in the case of any new machinery or plant (other than ships and aircraft) which has been acquired and installed after 31.03.2005, by the assessee engaged in the business of manufacture or production or any article or thing and such article or thing includes generation of electricity also. Plethora of judgment has been referred in the written submissions placed before the lower authorities as well as in the synopsis placed before it. We however take note of the judgement of Hon'ble Delhi High Court in the case of CIT vs NTPC Sail Power Co. Pvt. Ltd. (ITA No. 1290/2018 order dated 18.02.2019 wherein Hon'ble Court has held that electricity is an article or thing and benefit of additional depreciation cannot be denied.

8. Further, Hon'ble Gujarat High Court in the case of PCIT vs Kadodra Power Ltd. (Appeal No. 383/2019 dated 06.08.2019 adjudicated similar issue and has also discussed the amendment brought in the Finance Act, 2012 effecting from 01.04.2013 and held that the said amendment cannot read to negate the settled legal position that generation of electricity is akin to manufacture or production of an article or thing. Hon'ble Court accordingly held that the assessee is entitled to additional depreciation of plant &

machinery installed in the captive power plant. Before us Id. departmental representative failed to rebut the contention for the assessee by placing before us any other binding precedence in its favour.

9. Therefore, under the facts and circumstances of the case, we fail to find any infirmity in the finding of Id. CIT(A) and hold that the assessee is entitled to additional depreciation on the plant & machinery installed during the year for manufacturing/generation of power since generation of power is manufacturing or production of article or thing. Thus ground no. 1 & 2 raised by the revenue stands dismissed.

10. Ground No. 3 of the revenue is raised against the finding of Id. CIT(A) allowing the benefit of additional depreciation of Rs. 1,36,77,373/- u/s 32(1)(iia) of the Act on alleged purchase of ancillary machineries for modification of existing set up of plants on the ground that the said machineries were purchased for expansion of existing set up of machineries. The Id. AO denied the said claim during the course of assessment proceeding observing that the assessee failed to install new plant and machinery rather the said claim has been made on the purchase of various ancillary items to be used in the existing main plant and therefore, additional depreciation is not allowable. We observe that so far as the regular depreciation is concerned, Id. AO accepted the claim but has only disputed the additional depreciation. In this case, the assessee has made the said claim for purchase of various items which have been referred to in para 5.2 of the assessment order and the same is reproduced below:

Sl. No.	Particulars	Amount (Rs.)	Date of put to use	Remarks
1	Modification of Sulphur Bhatti	1407309.00	-do-	Required and used for manufacturing
2	Modification of	508172.00	-do-	

	<i>Sugar Grader</i>			<i>of sugar by the existing plant</i>
3	<i>Boiling House Modification</i>	68839092.00	-do-	
4	<i>Boiling House Insulation</i>	4722064.00	-do-	
5	<i>Mill House Modification</i>	50647429.62	-do-	
6	<i>Boiler Modification</i>	5828302.00	-do-	
7	<i>Weigh Bridge Modification</i>	4821362.00	-do-	
	<i>TOTAL:</i>	136773730.62		

11. Further, we notice that Id. CIT(A) after having discussed in detail, the items purchased by the assessee and their utilization in manufacturing activity along with the increase in the capacity of the manufacturing, also observed that the assessee has not acquired/purchase any plant and machinery which are prohibited under section 32(1)(ia) of the Act and also held that the capacity of the plant increased by 100% i.e. from existing capacity of 2500 TCD to 5000 TCD. The Id. CIT(A) further referred to the judgement of Hon'ble Supreme Court in the case of *Cochin Company vs VIT (1968) 67 ITR 199*, decision of Hon'ble High Court of Delhi in the case of *Twenty First Century Steels Limited (2004) 269 ITR 157* and allowed the claim of the assessee observing as follows:

"It is clear that the courts have adopted a purposive and contractual interpretation in relation to various words used in a newly added provisions contained u/s 32AB and a literal approach as the Same was not found to be correct. In the light of above approach it we construe the word" new machinery in literal sense and understand this term to mean purchase of manufactured or assembled complete machinery from the market

alone then perhaps the object behind the legislative scheme may be frustrated. The object is to encourage investment in new machinery and plant. If an assessee purchases a part or components of machinery and fabricated the some at its own premises by incurring expenditure and labour etc and thus assembled the entire machinery himself or itself, then investment in the purchase of component of such machinery and expenditure in the cost of labour, for fabricating such machinery should be taken to be utilization of

the amount. In Mysore Mineral Limited case (AIR 1999 SC 3189). It was held that a provision enacted for the benefit of an assessee should be so construed which enable the assessee to get its benefit. Similarly, in CIT vs Shallen Finance (AIR 1998 (2) SC 564) it was held therein that provision made for incurring the new plant & machinery have to be liberally construed.

The term 'new machinery or plant' have received settled connotations under law & machinery means a contrivance whereby several things are put together in such a way that a particular work is done to produce something or article. It is a complete or integrated collection of several objects or articles. In Webster dictionary machinery has been defined "the parts of a machine or a number of machine and kindred appliances collectively: any complex system of appliances for effecting a specific end. Plant has been defined in said dictionary "a set of machines, tools, apparatus etc. necessary to conduct a manufacturing enterprise or other business. If a new machinery or plant is purchased or fabricated and installed with the existing machinery for addition and/or expansion then on utilization of the amount in the purchase of supplementary or additional plant & machinery, the assessee shall be entitled to claim deduction u/s 32AB.

Keeping in view the above submissions and case laws cited above, I am of the considered view that substantial expansion has been done by the assessee and new plant & machineries came into existence. It is not the AO's case that the purchase vouchers are not genuine and therefore he should have treated this either as expenditure incurred for capital assets i.e. capital expenditure or expenditure incurred for maintenance of capital assets ie repairs and maintenance and revenue expenditure. The AO has not made up his mind. In my considered view the expenditure incurred for the expansion is not in the nature of current repairs. All the basic conditions contemplated in section 32(1)(ia) have been complied with by the assessee. Keeping in view the nature of Industry and nature of plant being used in the industry I am of the firm view that new plant & machineries was installed and hence the additional depreciation of Rs. 136773731/- should be allowed as additional depreciation u/s 32(1)(ia). This ground is therefore Allowed.

8. In the result the appeal is Partly Allowed."

12. The above findings of ld. CIT(A) stands uncontroverted by ld. departmental representative as nothing has been brought on record

which could negate the claim of the assessee as all the conditions provided u/s 32(1)(ii) of the Act has been fulfilled, and complete documentary evidence of the purchase of the said plant and machinery has been filed which includes the four bills of Universal Heavy Co. for bottom compartment, intermedia parts and top compartment bills have also been filed for MS fabricated 80 ton vacuum purchase from Uttam Industrial. It is not in dispute that with the purchase of said plant & machinery, the production capacity has increased by 100%. Under these given facts and circumstances, we are of the considered view that a substantial expansion has been carried out by the assessee with the purchase of new items during the year referred above. Therefore, all the basic conditions as contemplated u/s 32(1)(iia) are complied and a valid claim of additional depreciation has been made by the assessee and the ld. CIT(A) has rightly allowed the said claim. Thus, no interference is called for in the finding of Ld. CIT(A) and accordingly ground no. 3 raised by the revenue is dismissed.

13. Ground No. 4 is general in nature.

14. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 28.07.2023.

Sd/-

Sd/-

(Sonjoy Sarma)
Judicial Member

(Manish Borad)
Accountant Member

Dated: 28.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-11(1), Kolkata.
2. Respondent – Tirupati Sugars Ltd., 28/2, Room No. 803, 8th Floor, Shakespeare Sarani, Kolkata-700017.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata