

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद , न्यायिक सदस्य, एवं
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.265/RPR/2022

निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Alok Ferro Alloys Ltd.,
Plot No.458/459,
Urla Industrial Area, Raipur,
Chhattisgarh-493 221.

v. The Dy. Commissioner-
of Income Tax,
Circle-1(1), Raipur.

[PAN: AACCA 0569 P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.B.Doshi, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.Satya Prakash Sharma,
Sr.DR

सुनवाई की तारीख/Date of Hearing : 08.08.2023
घोषणा की तारीख /Date of Pronouncement : 18.08.2023

आदेश / ORDER

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, dated 22.11.2022, and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. Ld. CIT (A) erred in confirming addition/disallowance of Rs. 14,001/- made by the AO on account of Expenses incurred by the Appellant towards charity & donations on the contention

:: 2 ::

that the same has not been laid out wholly and exclusively for the purpose of business of the appellant. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

2. Ld. CIT (A) erred in confirming addition/disallowance of Rs. 1,73,307/- incurred by the Appellant towards Pooji and Festival expenses on the contention that the same has not been laid out wholly and exclusively for the purpose of business of the Appellant. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

3 (a). Ld. CIT (A) erred in confirming addition/disallowance of Rs. 26,950/- under section 14A of the Act read with Rule 8D of the Rules.

3(b). Ld. CIT (A) erred in denying the Appellant's contention that for AY 2012-13, no expenses have been incurred for earning exempt income and has wrongly applied Rule 8D without appreciating the facts of the Appellant's case. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

4. Ld. CIT (A) erred in confirming addition/disallowance of Rs.17,356/- for delayed payment of Employee's Contribution to Provident Fund/Employee State Insurance beyond the statutory due date prescribed under the governing statute. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

5. Ld. CIT (A) erred in confirming addition/disallowance of Rs.2,16,032/- u/s.40(a)(ia) alleging that the submission made by the company are not tenable and it is clear violation of provision of u/s 40(a)(ia), which is highly arbitrary, unwarranted and unjustified. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

6. Ld. CIT (A) erred in confirming addition/disallowance of Rs.4,06,916/- Not considered the additional depreciation on the contention that no new plant and machinery was found to be installed and put to use, which is highly arbitrary, unwarranted and unjustified. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary baseless and not justified.

3. The brief facts of the case are that the assessee is a company engaged in manufacturing of ferro alloy products and generation and sale of power. Return of income for the AY 2012-13 was filed electronically on 23.09.2012 declaring total income of Rs.'NIL'. The book profit of Rs.58,89,100/- for the purpose of MAT was declared and tax under the provisions of MAT of Rs.11,22,168/- was offered. Subsequently, the case of the assessee was selected for scrutiny through CASS. Statutory notices were issued along with detailed questionnaire, which were responded by the assessee by filing return replies from time to time and attending office of the AO through its Authorized Representative. The case was discussed and after considering the explanation of the assessee on various issues, the

:: 3 ::

AO has passed the assessment order u/s.143(3) of the Act with additions of Rs.8,54,202/- on 29.03.2015. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A), wherein, the appeal of the assessee was dismissed on merits. Dissatisfied with the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal.

4. At the very inception of the hearing, the Ld.AR of the assessee submitted a letter dated 08.08.2023 with a request to withdraw certain grounds of appeal as the same were not intended not to be pressed. The request letter of the Ld.AR on behalf of the assessee, is extracted as under:

Before the Hon'ble Income Tax Appellate Tribunal, Raipur Bench, Raipur

Name of assessee : **Alok Ferro Alloys Ltd.**
AY : AY 2012/13
ITA no. : ITA no. 265/RPR/2022


Respected Sirs,

- The above mentioned appeal filed by the assessee has been fixed for hearing on **08.08.2023**.
- In this regard, it is humbly submitted that following grounds of appeal are not being pressed by the assessee for the reasons mentioned below:-

Ground no. of appeal	Subject matter of ground	Reason
Ground no. 1	Disallowance out of expenses on charity & donation.	In view of smallness of the amount involved.
Ground no. 3(a) & (b)	Disallowance u/s 14A.	In view of smallness of the amount involved.
Ground no. 4	Disallowance on account of employee's contribution to PF/ESIC.	In view of decision of Hon'ble Supreme Court and the smallness of amount involved.
Ground no. 5	Disallowance u/s 40(a)(ia).	In view of the fact that assessee has not been able to get certificate in Form no. 26A from the payee.

The above grounds are also being withdrawn as the assessee would be eligible for aforesaid deduction on the disallowance made by AO.

- It is most humbly requested that the assessee may kindly be allowed to withdraw the above grounds.

Thanking you,
Yours faithfully,

(R. B. Boshi)
Counsel for assessee.

:: 4 ::

5. On perusal of the aforesaid letter which was also brought to the notice of the Ld.DR, on which, the Ld.DR has not raised any objection. Therefore, Ground Nos.1, 3(a), 3(b), 4, 5 of this appeal of the assessee which were requested not to be pressed are permitted to be withdrawn. Thus, Ground Nos.1, 3(a), 3(b), 4, 5 are dismissed as withdrawn.

6. Now, we shall be taking up Ground No.2 of the assessee's appeal pertaining to addition/disallowance of Rs.1,73,307/- incurred by the assessee towards Pooja & Festival expenses. The Ld.AR of the assessee submitted that this ground is squarely covered by the assessee in the case of DCIT v. Godawari Power & Ispat Ltd. and Anr. reported in [2022] 193 ITR 0869 (Raipur-Trib.), wherein, the co-ordinate Bench of the ITAT Raipur has held that expenses incurred on the occasion of any Pooja & Festival expenses are in the nature of business expenditure and thus, allowable as deduction. The relevant paras of the judgement are extracted as under:

39. In appeal, the Id. CT1'(A) restricted such disallowance to Rs. 12,87,978/- and allowed Rs.3,50,000/-. While doing so, he observed that except Rs.3,50,000/- incurred towards purchase and distribution of sweets, the balance amount does not relate to the business.

40. Aggrieved with such order of the Id. CJJ'(A), the Revenue is in appeal before the Tribunal.

41. We have considered the rival arguments made by both the sides and perused the material available on record. We find identical issue had come up before the Tribunal in assessee's own case wherein the Tribunal, considering the CBDT Circular No. 17(F.No.27(2)-IT/43) dated 06.05.1983 and another CBDT Circular No. 13A/20/68-IT(A-II) dated 03.10.1968 wherein it has been held that the expenses incurred on the occasion of Deepawali and Mahurat are in the nature of business expenditure had allowed and granted relief to Rs.6,54,900/-. Since in the instant case such relief granted by the Ld.CIT(A) is only Rs.3,50,000/- towards purchase and distribution of sweets, therefore, following the order of the Tribunal in assessee's own case for the preceding assessment years 2009-10 and 2010-11 respectively, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

:: 5 ::

7. The Ld.AR further placed its reliance on the order of the ITAT, Raipur in the case of M/s.Chhattisgarh Steel & Power Ltd., in ITA Nos.91 & 92/RPR/2020 for the AYs 2012-13 & 2013-14, dated 18.07.2023, wherein an identical issue was discussed and decided on the basis of decision in the case of Godawari Power & Ispat Ltd. and Anr. (supra) and the addition made on the similar ground by the Revenue was vacated. The observations of the ITAT in the case of M/s. Chhattisgarh Steel & Power Ltd., are extracted as under:

We, thus, finding no infirmity in the aforesaid, view taken by the CIT(Appeals) wherein he had vacated the disallowance of the assessee's claim for deduction of the aforesaid expenses, viz. (i) festival expenses: Rs.87,033/-; and (ii) gift expenses: Rs.46,470/-, uphold the same. Thus, the Ground of appeal No.1 raised by the revenue is dismissed in terms of our aforesaid observations.

8. The Sr. DR vehemently supported the order of the authorities below on this issue. The Ld.Sr.DR further submitted that since the disallowance pertaining to Pooja & Festival expenses was made by the AO on the basis of decision of the Hon'ble Chhattisgarh High Court in the case of M/s.Hira Ferro Alloys Ltd., reported in 227 CTR 508 (Chhattisgarh) dated 07.08.2007. The order of the AO confirmed by the Ld.CIT(A) deserves to be sustained.

9. We have considered the rival contentions and perused the materials available on record and case laws relied upon by the parties. The Ld.AR placed reliance on ITAT Raipur's decision in the case of Godawari Power & Ispat Ltd. and Anr. (supra) and also M/s.Chhattisgarh Steel & Power Ltd., (supra), however, since the order by the Hon'ble jurisdictional High Court

:: 6 ::

in the case of M/s. Hira Ferro Alloys Ltd.(supra) wherein the issue was decided against the assessee, was not under consideration of the ITAT while the aforesaid two orders were passed by the ITAT, we cannot go by the contentions of the Ld AR. In the present case the Ld. AO has made the addition following the order of the Hon'ble Jurisdictional High Court, which is binding on us, wherein the issue pertaining to puja expenses has been discussed in Para Nos.11-19 of the said order, the same are extracted here under:

11. The short question involved in this appeal is, whether the assessee, a limited company registered under the Companies Act, can claim deduction towards expenditure incurred by the company in Puja functions, including Vishwakarma Puja performed in the factory premises under s. 37(1) of the Act ?

12. The AO relying upon the judgment in the matters of Sanghameshwar Coffee Estates Ltd. (supra) and Kolhapur Sugar Mills Ltd. (supra) held that the company, which is a creation by legal fiction and not a real person made up of flesh and blood, cannot profess any religion and therefore, performance of Puja cannot be said to be need of the business and disallowed the deduction towards Puja expenditure. However, the CIT(A) relying upon the law laid down in Atlas Cycle Industries Ltd. (supra) held that the expenditure incurred in Puja is deductible under s. 37(1) of the Act and accordingly, deleted the disallowance. However, the Tribunal relying upon the decision of Nagpur Bench of the Tribunal in the case of Patrakar Prakashan (P) Ltd. in ITA No. 490/Nag/1997, held that performance of Puja cannot be considered as an expenditure related to the conduct of the business of the assessee.

13. In Chandulal Keshavlal & Co. (supra) the assessee-managing agent was entitled to get a particular sum as commission from the managed company as per agreement between them. However, the assessee agreed to accept a part of the commission due to him, which was credited to his account. The AO as well as the CIT(A) held that the total amount, which accrued as commission to the managing agent, was income of the assessee and deduction was not permissible. However, the Tribunal held that if the managing agent had foregone a part of his commission in the interest of managed company, the same would be allowed as expenditure under s. 10(2)(xv) of the Act. The above finding of the Tribunal was confirmed by the High Court. The finding of fact recorded by the Tribunal and confirmed by the High Court, was subsequently again confirmed by the Hon'ble Supreme Court with the observations as detailed above in para 5.

14. In the case of Malayalam Plantations Ltd. (supra) the assessee debited the amount paid by him towards estate duty, which was payable on the death of certain shareholders, who were not domiciled in India, to Revenue in its accounts in ascertaining the profits and gains of its business for the said year. However, the ITO as also the appellate authority included the said amount in the income of the

:: 7 ::

company. The Tribunal held that the assessee was entitled to deduct the said amount in computing income, and set aside the order of the appellate authority. The High Court confirmed the order of the Tribunal. However, the Hon'ble Supreme Court interpreting the expression "for the purpose of business", as reproduced above in para 6, allowed the appeal of the Revenue and held that the expenditure incurred by the assessee was not allowable under s. 10(2)(xv) of the Act as business expenditure because payments were not for the purpose of business.

15. The case of *Brijraman Das & Sons (supra)* relates to expenditure incurred by a Hindu trader in *Ganeshji ki Puja* performed at the time of Mahurat or opening of their account books on the auspicious occasion of Diwali, whereas, in the instant case, the expenditure was incurred by a company incorporated under the Companies Act in *Puja and Vishwakarma Puja* and as such, the same is distinguishable on facts.

16. The facts of the present case are almost similar to the facts of *Sanghameshwar Coffee Estates Ltd. (supra)*.

17. In the latest judgment in the matter of *CIT & Ors. vs. Saravana Spinning Mills (P) Ltd. (2007) 211 CTR (SC) 281 : (2007) 7 SCC 298* the Hon'ble Supreme Court while considering the scope of deductions under s. 37 of the Act, has held in para 21 of the judgment that a particular item of expenditure may be deductible if the expenditure does not fall within ss. 30 to 36; that it should have been incurred in the accounting year; that it should be in respect of a business carried on by the assessee; that it should not be on personal account of the assessee; that it should not be in the nature of capital expenditure and that it should be spent wholly and exclusively for business.

18. We are in respectful agreement with the law laid down by the Karnataka High Court in the matter of *Sanghameshwar Coffee Estates Ltd. (supra)* and the Bombay High Court in *Kolhapur Sugar Mills Ltd. (supra)* and accordingly, we hold that the expenditure incurred in *Puja/ Vishwakarma Puja* by a company cannot be treated as expenditure incurred wholly and exclusively for the purposes of business or profession of a company, and the assessee cannot be allowed any deduction under s. 37(1) of the Act towards such expenditure. We find no illegality or infirmity in the order of the Tribunal restoring the order of the AO.

19. In the result, the appeal being devoid of substance deserves to be dismissed and is, accordingly, dismissed.

10. On perusal of the aforesaid findings of the Hon'ble High Court in the case of *M/s.Hira Ferro Alloys Ltd., (supra)* which were directly on the issue in the present case, respectfully following the same, we do not find any infirmity in the order of the Ld.CIT(A) wherein the addition on *Pooja & Festival expenses for Rs.1,73,307/-* made by the AO, was sustained. We, therefore, in concurrence with the view taken by the order of the Ld.CIT(A),

:: 8 ::

uphold the same. Consequently, **Ground No.2** of the assessee stands dismissed.

11. Ground No.6 of the assessee's appeal pertaining to additional disallowance of Rs.4,06,916/- upholding the addition on account of additional depreciation made by the AO. The Ld.AR of the assessee drew our attention to Page No.3 of the assessment order, wherein, while making this addition, the AO observed as under:

7. On perusal of Tax Audit Report it was found that the assessee claimed additional depreciation of Rs.4,06,916/-. The depreciation chart is reproduced here under:-

1. Ferro Division

Description of assets/block of assets	Rate of depreciation	W.D.V. as on 01.04.2011	Addition		Deductions	Depreciation allowable	Additional Depreciation	W.D.V.as on 31.03.2012
			More than 180 day's	Less than 180 days				
First Block	10%	1416867.60	33182.00	1107815.00	0.00	200396.00	0.00	2357468.60
Second Block	15%	3436600.00	8739438.00	0.00	0.00	1826406.00	0.00	10349632.90
Third Block	15%	5673820.32	438620.00	4099959.00	0.00	1224363.00	406916.00	8581120.32
Fourth Block	60%	26958.60	25200.00	113511.00	0.00	65348.00	0.00	100321.60
Total		10554246.52	9236440.00	5321285.00	0.0	3316513.00	406916.00	21388542.52

On perusal of the depreciation chart, it cannot be ascertained that the assessee claimed on any new plant and machinery. The assessee therefore was asked to explain the allowability of additional depreciation with supporting documents, in response, the assessee vide written reply stated that the assessee company has purchased fixed assets amounting to Rs. 1,72,94,687/- and enclosed copy of ledger. As per provision of the Act, additional depreciation is available on the new Plant and Machinery installed and put to use during the year under consideration and not on the addition to the plant and machinery. Since, no new plant and machinery was found to be installed and put to use for the year under consideration, additional depreciation is not allowable as per the provisions of section 32(ia) of the I.T.Act and therefore, Rs.4,06,916/- is disallowed and added to the total income of the assessee.

12. Adverting to the observations of the AO, the Ld.AR submitted that since there was addition in plant & machinery during the year, therefore, the same should be considered as plant & machinery, eligible for depreciation in terms of provisions of Sec.32(1)(ia) of the Act. In this aspect, the Ld.AR placed his reliance to the recent judgment by the ITAT in the case of EFACEC Switchgear India P. Ltd. Vs. ACIT in ITA number

:: 9 ::

5850/Del/2018 dated 26.04.2022, wherein, the ITAT, Delhi relying on the judgement of the Hon'ble Supreme Court in the case of Scientific Engineering House Pvt. Ltd. v CIT reported in [1986] 157 ITR, wherein in accordance with the findings emerged from the House of Lords in IRC v. Barclay, Curie & CO. Ltd., reported in [1970] 76 ITR 62 has held as under:

6. Appreciating the matter on record and contentions of counsel it can be observed that Hon'ble Supreme Court of India in Scientific Engineering House (P) Ltd. case has relied the following functional test as laid by House of Lords in IRC v. Barclay, Curie & Co. Ltd. [1970] 76 ITR 62:

" ..In order to decide whether a particular subject is an 'apparatus' it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary... "

" In other words, the test would be: Does the article fulfil the function of a plant in the assessee's trading activity? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be a plant."

7. The bench is of considered opinion that since tools, dies, jigs, etc., are used by the appellant for its business of manufacturing switchgear products, it is evident that moulds, dies and tools are not independent of the plant and machinery, but are parts of the machinery. Once they are worn out, the machines cannot turn out the product to the business specifications and this has to be obtained only on a replacement of the tools or dies and moulds.

8. Further also, in assessee's own case in the subsequent years, the revenue has allowed the claim of additional depreciation on these tools etc. and thus the ground raised in the appeal is allowed.

13. The Sr.DR, on the other hand, relied upon the order of the Ld.CIT(A) of the authorities below, we have considered the rival contentions and perused the material available on record and certain judicial pronouncements. On perusal of the order of the AO, wherein, it was observed that the additional depreciation is available on new plant & machinery installed and put to use during the year under consideration and not on the addition to the plant & machinery. It is further observed by the AO, since no new plant & machinery found to be installed and put to use

:: 10 ::

for the year under consideration, additional depreciation is not allowable as per the provisions of sec.32(1)(iia) of the Act. On perusal of the order of the Ld.CIT(A), wherein ground pertaining to additional depreciation was discussed at length, the same is extracted as under:

'The next ground of appeal is directed against not considering the claims of additional depreciation of Rs.4,06,916/- on plant and machinery. It was observed by the AO as under:

As per provision of the Act, additional depreciation is available on the new Plant and Machinery installed and put to use during the year under consideration and not on the addition to the plant and machinery. Since, no new plant and machinery was found to be installed and put to use for the year under consideration, additional depreciation is not allowable as per the provisions of section 32(iia) of the IT Act and therefore, Rs. 4,06,916/- is disallowed and added to the total income of the assessee.

During the appeal it was submitted by the appellant as under:

We would like to submit that the appellant claimed additional depreciation on addition to plant and machinery Rs. 4,06,916/-. The learned AO alleging that there is no new plant and machinery was found to be installed and put to use for the year under consideration therefore additional depreciation is not allowable as per provision of section 32(1)(iia).

For ease of reference relevant extract of section 32(1)(iia) of the Act is set out below:

"in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided further that no deduction shall be allowed in respect of—

- 1. any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or*
- 2. any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or*
- 3. any office appliances or road transport vehicles; or*
- 4. any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing*

:: 11 ::

the income chargeable under the head "Profits and gains of business or profession" of any one previous year;"

Reliance is placed on Clause 8 of Notes to Clauses to the Finance Bill 2005:

"Clause 8 seeks to amend section 32 of the Income-tax Act relating to depreciation.

Under the existing provisions contained in clause (iia) of subsection (1) of the said section, a further sum equal to fifteen per cent, of the actual cost of any new machinery or plant (other than ships and aircraft) acquired and installed after the 31st day of March, 2002 by an assessee engaged in the business of manufacture or production of any article or thing, is allowed as deduction as further depreciation.

It is proposed to increase the said sum of further depreciation mentioned in the said clause (iia) from fifteen per cent, to twenty per cent. It is further proposed to omit the conditions relating to industrial undertaking being new or substantial expansion mentioned in the first proviso to the aforesaid clause (iia) and also to omit the requirements of furnishing details of machinery or plant and report of an accountant mentioned in the third proviso of that clause (iia).

This amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years."

Further reliance is placed to the "Memorandum Explaining the provisions relating to Direct Taxes to the Finance Bill 2005:

"Rationalization of rates of depreciation and enhancement of additional depreciation on new machinery and plant.

Further, in order to encourage new investment, the initial depreciation on new machinery and plant is proposed to be increased to 20 per cent from the existing level of 15 per cent. The requirement of creating a minimum increase of 10 per cent in installed capacity for availing the initial depreciation is also proposed to be eliminated. Consequently, the initial depreciation will be available to all new plant and machineries except those referred to in the proviso to the proposed clause (iia) of section 32 of the Income-tax Act.

This amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. [Clause 8]"

It is apparent from above that for claiming additional depreciation new machinery or plant has to be acquired and installed after 31st day Of March 2005. The emphasis supplied by the legislature on new plant and machinery was to restrict additional depreciation on used plant and machinery and accordingly proviso to section 32(1)(iia) excludes depreciation on used plant and machinery.

It is an admitted position that during the AY 2012-13 the appellant has incurred expenditure on new plant and machinery and the same was installed in AY 2012-13. The learned AO has disallowed the claim of additional depreciation of the appellant on the alleged ground that Rs. 4,06,916/- related to addition in existing plant and machinery, ignoring the fact that the addition to existing plant and

:: 12 ::

machinery was also new. There is no restriction under section 32(1)(ia) of the Act as amended by the Finance Act 2005 to disallow additional depreciation to addition made to existing plant and machinery. The only condition required to be fulfilled is the addition should be new plant and machinery and not used one.

In view of our submission above it is humbly submitted before your Honour to allow the claim of additional depreciation of Rs, 4,06,916/- in computing the taxable income.

We shall be pleased to provide any further clarification or information that your Honour may desired. Based on the above, we pray that relief may kindly be granted.

In view of the fact as stated above, appellant is requested to deleted the additions made by the Ld. AO.

We shall be pleased to provide any further clarification or information that your Honour may desired. Based on the above, we pray that relief may kindly be granted.

I have considered the ground of appeal, gone through the submissions of the appellant and seen the order of the AO. I observed that no relevant details have been brought on records by the appellant in the claims made for additional depreciation. There is no material with respect to use of the impugned plant and machinery for the year under consideration along with relevant details. In the light of the above the disallowance made by the AO on account of claims of additional depreciation is confirmed and ground no. 6 is dismissed.

14. Ld Sr.DR based on decision of the observations of the Ld CIT(A) submitted that the assessee was failed to furnish the relevant details pertaining to Plant and Machinery, for which claims was made for additional depreciation, as to whether the same were put to use of the impugned plant and machinery for the year under consideration. Under such circumstances the order of the Ld CIT(A) deserves to be sustained.

15. We have considered the rival contentions, perused the material available on records and case law pressed before us. Before discussing and deliberating on the issue first we shall go through the relevant provisions of the act and Explanatory notes on the provisions of the Finance Act to understand the intent of the legislature:

:: 13 ::

section 32(1)(iia) of the Act is set out below:

"in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by **an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power**, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided further that no deduction shall be allowed in respect of—

- (A) any machinery or plant which, **before its installation** by the assessee, **was used either within or outside India by any other person**; or
- (B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or
- (C) any office appliances or road transport vehicles; or
- (D) **any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;**"

CIRCULAR NO. 3/2006

EXPLANATORY NOTES ON THE PROVISIONS OF THE FINANCE ACT, 2005

F. NO. 153/120/2005-TPL

GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 27th February, 2006

3.6 Enhancement of the rate of additional depreciation on new machinery and plant and withdrawal of certain conditions –

Under the existing provisions of clause (iia) of sub-section (1) of section 32, additional depreciation is allowed at the rate of fifteen per cent of the 9 . actual cost of the new machinery and plant (other than ships and aircraft) acquired and installed after the 31st day of March, 2002. Additional depreciation is allowed in the case of a new industrial undertaking during any previous year in which it begins to manufacture or produce any article or thing on or after the 1st day of April, 2002 or to any industrial undertaking existing before that date if it achieves substantial expansion during the previous year by way of increase in its installed capacity by not less than ten per cent.

In order to encourage investment, the Finance Act, 2005 has amended section 32 to increase the rate of additional depreciation to twenty per cent on new machinery and plant other than ships and aircraft, acquired and installed after the 31st day of March, 2005, and **dispensed with the condition of additional depreciation to be allowed to a new industrial undertaking and the condition of expansion in installed capacity**. Depreciation rates have been modified through a Notification dated 28th February, 2005. The modified depreciation rates are effective from Assessment Year 2006-07. Among other things, the rate of depreciation on plant and machinery has been reduced from 25 % to 15 %. Applicability: From A.Y. 2006-07 onwards. [Section 8]

:: 14 ::

16. The sole controversy emerged in the present case is that -

"Whether the investment in additions to existing plant and machinery during the year under consideration under the present case should be considered as new machinery acquired and installed or not for the purpose of allowing additional depreciation within the meaning of provisions of clause (iia) of sub-section (1) of section 32."

17. On perusal of the orders of authorities below, it is evident that all the other relevant ingredients of section 32(1)(iia) of the Act, were not disputed by the authorities viz. (i) an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, (ii) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person, (iii) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;" , Accordingly depreciation at normal rates was allowed.

18. If we look into the intent of the legislature while making certain amendments in the provisions of section 32 for Enhancement of the rate of additional depreciation on new machinery and plant and withdrawal of certain conditions, as extracted herein above was to grant relief of additional depreciation to assessee's with the main objective to (i) encourage investment and further have (ii) dispensed with the condition of additional depreciation to be allowed to a new industrial undertaking and (iii) the condition of expansion in installed capacity. On perusal of such indenture of the legislature, it is clearly emanated that the modification in

:: 15 ::

section 32(1)(iia) of the Act, were made with the intent to encourage further investments by the assessee's engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power. Since the conditions pertaining to allowing of additional depreciation to new industrial undertakings and expansion in installed capacity were also dispensed with, it can be easily interpreted that addition to plant and machinery, subject to certain conditions under the second proviso to section 32(1)(iia) of the Act, are entitled for additional depreciation. Our interpretation is further fortified by the order of ITAT Delhi in the case of EFACEC Switchgear India P. Ld.(supra) where in it was the observation that tools, dies, jigs, etc., are used by the appellant for its business of manufacturing switchgear products, it is evident that moulds, dies, and tools are not independent of the plant and machinery, but are parts of the machinery. Once they are worn out, the machines cannot turn out the product to the business specifications and this has to be obtained only on a replacement of the tools or dies and moulds. Accordingly, any addition in the plant and machinery are eligible for additional depreciation but subject to satisfaction of conditions carved out in the amended section 32(1)(iia) and its provisions.

19. In the present case, according to observations of Ld CIT(A), relevant details pertaining to additions in the plant and machinery have not been brought on records by the appellant in the claims made for additional depreciation. There is no material with respect to use of the impugned plant

:: 16 ::

and machinery for the year under consideration along with relevant details. Though, it is also apparent from records that no such query was raised by the department at any stage may it be assessment stage or appellant stage, in the interest of natural justice, we are of the considered opinion that the matter should be restore back to the files of Ld AO to adjudicate the issue afresh, in terms of our observations herein above. In the result ground no 6 of the appeal of the assessee is partly allowed for statistical purposes.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on the 18th day of August 2023, in Raipur.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अरुण खोडपिया)

(ARUN KHODPIA)

लेखा सदस्य/ACCOUNTANT MEMBER

रायपुर/Raipur,

दिनांक/Dated: 18th August, 2023.

TLN, Sr.PS (on Tour)

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur