

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.69/NAG/2019
निर्धारण वर्ष / Assessment Year : 2007-08

Sharda Ispat Limited,
C/o. M/s. Loya Bagri & Co.,
Chartered Accountants,
Gandhibag, Nagpur – 440002

PAN : AABCS8628N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income Tax,
Circle – 2, Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Shikha Loya
Revenue by : Smt. Rashmi Mathur

सुनवाई की तारीख / Date of Hearing : 19-10-2023
घोषणा की तारीख / Date of Pronouncement : 30-10-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 25-01-2019 passed by the Commissioner of Income Tax (Appeals)-2, Nagpur [‘CIT(A)'] for assessment year 2007-08.

2. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the order of AO in disallowing depreciation.

3. The ld. AR, Ms. Shikha Loya submits that the order of CIT(A) in confirming the view of AO in disallowing the depreciation is not justified. She argued that the assessee received Special Capital Incentive of Rs.50,00,000/- during the year under consideration from SICOM and she referred to page 1 of the paper book. She submits that the Government in order to achieve dispersal of industries and to attract to the underdeveloped areas of State, offered a Package of Incentive to new units/expansion. The said special capital incentive was not given for the purpose of any capital asset or to subsidize cost of assets and it has no relation directly or indirectly for the purpose of capital assets. The CIT(A) incorrectly confirmed the view of AO in considering the said special capital incentive for the purpose of depreciation. She referred to gist of the submissions and placed reliance in the case of Reliance Industries Ltd. reported in 339 ITR 632 (Bombay) and prayed to delete the addition as confirmed by the CIT(A). The ld. DR relied on the orders of both the authorities below.

4. Heard ld. AR and ld. DR, we note that the AO disallowed depreciation in terms of proviso to Explanation 10 of section 43(1) of the Act which is evident from para 4 of the assessment order. The CIT(A) also by referring to the said proviso confirmed the order of AO which is evident from para 5.2.2 of the impugned order. The point for consideration is whether, the said disallowance is justified in terms of proviso to Explanation 10 of

section 43(1) of the Act. In a recent decision of this Tribunal in the case of Inox Air Products Private Limited in ITA No. 1042/PUN/2017 for A.Y. 2014-15 held when the subsidy is not granted to meet the cost of any fixed asset and proviso to Explanation 10 of section 43(1) of the Act have no application. Admittedly, in the present case also, the assessee received Special Capital Incentive from SICOM for its two Units i.e. Kamptee Road Units and Hingna Road Units and the Government granted the said incentive in terms of Resolution No. IDL-1088(6603)/IND-8. In accordance with the same, the assessee received two Eligibility Certificates (EC) for expansion of Kamptee Unit under EC-4046 and Hingna Unit under EC-3599, which clearly shows the Government issued said eligibility certificates for expansion of assessee's two units. Therefore, we find the view of AO in reducing the value of subsidy from the cost of assets for the purpose of depreciation in which, in our opinion, is not justified in view of decision of this Tribunal in the case of Inox Air Products Private Limited (supra). Therefore, the addition of Rs.7,50,000/- is deleted by holding the proviso to Explanation 10 of section 43(1) of the Act is not applicable. Thus, the grounds raised by the assessee are allowed.

5. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 30th October, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th October, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nagpur
4. The Pr. CIT-2, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune