

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.2730/PUN./2017
Assessment Year 2011-2012

The ACIT, Circle-1, Aayakar Bhavan, 31/C-2, Tarabai Park, Kolhapur. Maharashtra.	vs	Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd., Sadashivnagar, Hamidwada, Kagal, Kolhapur. PANAAAAK1300Q
Appellant		Respondent

Revenue by :	Dr. Nitin Patil
Assessee by :	-None-

Date of Hearing :	26.02.2024
Date of Pronouncement :	28.02.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2011-2012, arises against the CIT(A)-2, Kolhapur, Kolhapur's Order in appeal no.Kop/147/2015/16, dated 28.10.2015, involving proceedings u/s. 154 of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *“On the facts and in the circumstances of the law, the CIT(A)-2, Kolhapur has erred in allowing additional depreciation for AY 2011-12 considering the fact that assessee has forgone such claim which was available to him for AY(s) 2006-07 to 2009-10; when, such claim is not allowed in the light of an Explanation 5 inserted by the Finance (No.2) Act, w.e.f 01/04/2002.*
2. *On the facts and in the circumstances of the law, the CIT(A)-2, Kolhapur, erred in not appreciating the legal position, that additional depreciation u/s.32(l)(iia) of the Act is allowed for the "only" year during which new machinery or plant acquired and installed, as well as, such claim of additional depreciation cannot be endorsed further to succeeding year(s).*
3. *On the facts and in the circumstances of the law, the CIT(A)-2, Kolhapur, erred in allowing the claim of additional depreciation on WDV ignoring the legal position, that such claim is allowed only on actual cost of new machinery or plant acquired and installed after the 31st day of March, 2005.*
4. *The appellant prays that the order of the CIT(A)-2, Kolhapur be vacated and that of the Assessing Officer be restored.*
5. *The appellant craves leaves to add, alter, amend, modify any of the grounds or raise any other ground at the time of*

proceedings before the Hon'ble Tribunal which may please be granted.”

3. Dr. Patil vehemently submitted during the course of hearing that the CIT(A)'s herein has erred in law and on facts in reversing the Assessing Officer's action disallowing the impugned additional depreciation relief to the assessee vide following detailed discussion :

From the same, it is seen that the appellant has not claimed any additional depreciation on new P&M assets from AY 2005-06 (year in which additional depreciation was introduced) to AY 2009-10. He has claimed depreciation at normal rates for P&M upto AY 2009-10. However in AY 2010-11, the appellant bifurcated the block of assets of P&M itself into two parts:- one being eligible for depreciation at the normal rates and the other being eligible for additional depreciation at a higher rate. The respective opening WDV's were Rs 5,99,68,428 (normal depreciation) and Rs 2,29,00,408 (additional depreciation). When queried about the basis of such bifurcation, the appellant stated that he has adopted the opening WDV of the P&M eligible for additional depreciation at Rs 2,29,00,408 by calculating the WDV of the P&M acquired after 01/04/2005 (after claiming normal depreciation on them). The same is as under:-

SR.N O.	DESCRIPTION OF ASSET	RATE OF DEP	OPENING	ADDITIONS		TOTAL AMOUNT	DEPRECIATION CLAIMED	CLOSING
			WDV	BEFORE	AFTER			WDV
				180 days	180 Days			
	Normal Depreciation							
1	2006-07							
	Block - Plant and Machinery	15%		15,430	50,64,702	50,80,132	3,82,167	46,97,965
2	2007-08							
	Block - Plant and Machinery	15%	46,97,965	4,97,751	1,16,55,338	1,68,51,054	16,53,508	1,51,97,546
3	2008-09							
	Block - Plant and Machinery	15%	1,51,97,546	15,732	1,07,18,777	2,59,32,055	30,85,900	2,28,46,155
4	2009-10							
	Block - Plant and Machinery	15%	2,28,46,155	-	37,63,434	2,66,09,589	37,09,181	2,29,00,408



It transpires that the appellant has therefore actually forgone the additional depreciation available to him from AY 2006-07 upto AY 2009-10 on new assets purchased. He started claiming additional depreciation on new assets purchased including opening WDV only from AY 2010-11 onwards. The cascading effect of this exercise was visible in the present AY 2011-12. From the chart as extracted above, it is evident that the appellant is eligible to claim additional depreciation on the opening WDV of assets as on 01/04/2010 i.e AY 2010-11 onwards. In the light of these facts, the AO is not correct in not allowing additional depreciation on the opening WDV for the AY 2011-12. There is no concept of individual assets after the introduction of block of assets and therefore once the new assets eligible for additional depreciation have been purchased by the appellant, he is eligible to claim additional depreciation on the opening WDV in the subsequent years also. Otherwise this would result in an anomalous situation where the opening WDV is subject to a particular rate while the new assets purchased are subject to another rate. In the light of this discussion, the disallowance of Rs 56,22,453 made by the AO is deleted. Ground 1 is allowed.

4. We have given our thoughtful consideration to the Revenue's pleadings as well as its foregoing vehement contentions and see no merit therein. This is for the precise reason that we are dealing with an instance of sec.154 rectification proceedings wherein the learned Assessing Officer had framed his sec.143(3) regular assessment on 07.01.2014 accepting the assessee's depreciation as well as additional depreciation claims, as the case may be. This followed the Revenue Audit Party ["RAP"]'s objections that the Assessing Officer's regular assessment had resulted in under-assessment of income *qua* the foregoing depreciation/additional

depreciation issue(s). This made the Assessing Officer to initiate sec.154 rectification vide notice to the assessee dated 09.06.2015. The Revenue could hardly dispute before us that the Assessing Officer's rectification order herein dated 07.10.2015 went for a detailed discussion for the purpose of re-computing the assessee's depreciation/additional depreciation claim(s) resulting in consequential disallowances; which in turn, stand reversed in the CIT(A)'s lower appellate findings.

This leaves Revenue aggrieved.

5. All these foregoing clinching facts sufficiently indicate that the Assessing Officer's impugned action invoking sec.154 rectification for the purpose of carrying-out a detailed exercise of re-computing the assessee's depreciation/additional depreciation could hardly be held as sustainable in law in principle in light of TS Balram, ITO vs. Volkart Bros. [1971] 82 ITR 50 (SC). Their lordship's have settled the law long back that the purpose of sec.154 rectification is to deal with the apparent mistakes on record than carrying-out detailed roving enquiries. This is indeed coupled with the fact that the CIT(A)'s has already termed the impugned rectification as a debatable one which further strengthens the assessee's stand against the applicability of sec.154 proceedings. We thus see no reason to accept the Revenue's instant sole substantive grievance. Ordered accordingly.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 28.02.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th February, 2024

VBP/-

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1.	The applicant
2.	The respondent
3.	The CIT(A) concerned
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, Pune "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.