

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Sanjay Arora, AM & Shri Anil Kumar Dugar, JM**

ITA No.92/Coch/2023 :Asst.Year 2014-2015

M/s.Diadora Shoes Pvt. Ltd. VKC Tower Kolathara P.O. Calicut – 673 655 <b>PAN :AABCD9692D.</b>	v.	The Assistant Commissioner of Income-tax, Circle 2(1) Calicut.
(Appellant)		(Respondent)

Appellant by : --- None ---

Respondent by : Smt.J.M.Jamuna Devi, Sr.DR

<b>Date of Hearing : 18.04.2024</b>	<b>Date of Pronouncement : 19.04.2024</b>
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**ORDER**

**Per Anil Kumar Dugar, JM :**

This appeal at the instance of the assessee is directed against the impugned order dated 06.01.2023 passed by the learned Commissioner of Income-tax (Appeals)'s [in short "CIT(A)]" u/s.250 of the Income-tax Act, 1961 (in short "the Act"). The relevant assessment year is 2014-2015.

2. In the instant appeal, the solitary ground taken out for challenge to the impugned appellate order as well as assessment order is the purported disallowance of claim of unabsorbed depreciation of Rs.59,000/- in respect of the assets acquired in preceding assessment year i.e. A.Y. 2013-2014 under section 32(1)(ia) of the Act on the ground that the claim of additional depreciation is admissible only in the year of acquisition of assets and explanation inserted to said

provision has come into force w.e.f. 01.04.2016, and not applicable to the assessment year under dispute.

3. At the time of call, none appeared on behalf of the assessee, while the Learned Departmental Representative relied on the orders by the Revenue Authorities. Inasmuch as a similar matter has been considered by this Tribunal in the assessee's own case for A.Y. 2015-2016 (in ITA NO.213/Coch/2023), we proceed to decide the instant appeal on merits.

4. Before we apply the ratio of the judgment afore-referred, it is imperative to deal the facts of case. It is apparent from the assessment order dated 22.12.2016 that the Id.ACIT, Circle 2(1), Kozhikode (in short "AO") disallowed the claim of unabsorbed depreciation of Rs.59,000/- in respect of the assets acquired in preceding assessment year i.e., A.Y. 2013-2014 under section 32(1)(iia) of the Act on the basis of following observation:-

*"2. During the year assessee had made addition of Rs.43181/- for plant and machinery and Rs.12,82,865/- in respect of mould and dyes, both these eligible for additional depreciation of 20%. The additional depreciation eligible is Rs.265209/-. Against this the assessee had claimed Rs.3,24,209/-. When queried it is submitted that the difference of Rs.59,000/- represents the assets purchased in financial year 2012-13 and on which only 50% additional was allowed as the asset was put to use for less than 180 days. The contention of the assessee is that where an eligible asset is purchased, the asset is eligible for additional depreciation of 20% and if only 50% was allowed in the first year in the balance is allowable in the subsequent year.*

*3. The proviso 2 Sec 32(i) restricts depreciation in respect of assets mentioned in clause i, clause ii, clause iia where the*

*asset is in use for less than 180 days. Here the claim is under 32(iia) and therefore depreciation can be allowed only at 50%. As per Sec 32(iia) additional depreciation is to be allowed ONLY IN THE YEAR OF ACQUISITION OF ASSETS. Here the assessee is claiming the same in the second year and as such the claim is disallowed since there is no enabling section under which the same can be allowed.”*

5. Being aggrieved by the assessment order dated 22.12.2016, the assessee preferred an appeal before the Ld.CIT(A), who upheld the said assessment order with the observation that the explanation inserted to provision under section 32(1)(ia) of the Act was inserted w.e.f. 01.04.2016 and hence the benefit of said explanation would be applicable to case pertaining to period A.Y. 2016-2017 and subsequent year, vide order dated 06.01.2023.

6. Being aggrieved by the said appellate order dated 06.01.2023 the assessee instituted the instant appeal by challenging such disallowance on the following grounds:-

*“The learned Assessing Officer was not justified in disallowing additional depreciation amounting to Rs.59,000/- in respect of new machinery acquired and put to use in the preceding year.”*

7. The operative part of the order afore-referred is reproduced as under :-

*“3. We have heard the parties, and perused the material on record.  
3.1 To begin with, in terms of the law of precedence, the decision by only the Hon'ble Apex Court or the Hon'ble jurisdictional High Court is binding on the Tribunal (Suresh Desai & Ass. v. CIT [1998] 230 ITR 912 (Del); CIT v. Thana Electricity Supply Co. Ltd. [1994] 206 ITR 727 (Bom)(FB)). In case of conflict of opinion between the decisions by the non-jurisdictional High Court, it is the view that appeals to the judicial mind and conscience of the Tribunal that would prevail. Rather, that would be the case even in the absence of any contrary view inasmuch as the view of the non-jurisdictional High Court, without doubt carrying a strong*

*persuasive value, is not binding. We consider it relevant to clarify this in view of the parties relying on contrary decisions, none by the Hon'ble Apex or jurisdictional High Court.*

3.2 *The relevant provision reads as under:*

**Depreciation.**

**32. (1)** *In respect of depreciation of—*

*(i) buildings, machinery, plant or furniture, being tangible assets;*

*(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*

*owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—*

*(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;*

*(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:*

**Provided** .....

**Provided further** *that where an asset referred to in clause (i) or clause (ii) or 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 or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:*

*(iia) 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, transmission or 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 that** ....

*A third proviso was inserted to section 32(1)(ii) by Finance Act, 2015, w.e.f. 01.04.2016, reading 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 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:(emphasis, supplied)*

3.3 *The decisions relied upon by either side stand perused. In Rittal India Pvt. Ltd. (supra), the Hon'ble High Court was of the view that the provision being a one-time benefit with a view to encourage industrialisation, it is to be construed reasonably, liberally and purposefully. Reading it in a manner to allow the balance 50% depreciation in the following year would thus be in order. This was followed in Brakes India Ltd. (supra), which in turn was followed in Aztec Auto Pvt. Ltd. (supra). In TP Textile Pvt. Ltd. (supra), the amendment was held clarificatory and, thus, retrospective, in view of the memorandum explaining the amendment, which reads as under:*

*“ ..... 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 depreciation 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 and machinery, shall be allowed in the immediately succeeding previous year.*

*This view was adopted in Godrej Industries Ltd. (supra), making reference also to Rittal India Pvt. Ltd. (supra). The decision in Era Infrastructure(India) Ltd. (supra), even as pointed out during hearing by Sh.Venugopal, the ld. counsel for the assessee, is not qua the said amendment. The Hon'ble High Court was in that case concerned with the amendment to section 14A by Finance Act, 2022, w.e.f. 01.04.2022. The Hon'ble Court adverted to the decision in Sedco Forex International Drill Inc. (supra), wherein the Apex Court was examining the applicability of the Explanation to section 9(1)(ii), substituted by Finance Act, 1999, w.e.f. 01.04.2000. The amended explanation widened the scope of the provision, and was accordingly held as not clarificatory, making reference to decisions in CIT v. Goslino Mario [2000] 241 ITR 312 (SC); CIT v. S.R. Pattan [1992] 193 ITR 49 (Ker); and CIT v. S.G. Panatale [1980] 124 ITR 391 (Guj).An assessment, it explained, is to, in terms of the settled law, be made with reference to the law in force at the relevant time. The provision was accordingly held as prospective. Inasmuch as it is the ratio of a decision that has precedential value, we find the Revenue's reliance as apposite.*

3.4 *In our view, though, the correct manner of proceeding in the matter is to read the unamended law, and to come to a conclusion as to the clarificatory or otherwise nature of the amendment, on that basis, as was also undertaken by the Hon'ble Court in TP Textiles Pvt. Ltd. (supra) (para 11.5). Reference in this context may also be made to the decision in CWT v. B.R. Theatres &Indl. Concerns P. Ltd. [2005] 272 ITR 177 (Mad). The test to be applied for deciding as to whether a later amendment should be given a retrospective effect, despite the legislative declaration specifying a prospective date as the date from which the amendment is to come into force, it was explained therein, is as to whether without the aid of the subsequent amendment the unamended provision is capable of being*

*so construed as to take within its ambit the subsequent amendment. If the unamended law could be held in a manner consistent with what the amendment seeks to achieve, the same is clearly clarificatory and, thus, retrospective, else not. This in fact represents settled law in the matter; the amended provision thereby clearly indicating of it being explanatory or declaratory of what the law always was. The sole premise of interpretation is to decipher the legislative intent consistent with its object [Catholic Syrian Bank v. CIT [2012] 343 ITR 270 (SC)(also see: CIT v. Baby Marine Exports [2007] 290 ITR 323 (SC); CIT v. Mahindra & Mahindra Ltd. [1983] 144 ITR 225 (SC)]. The legislative intent per s. 32(1)(iia) is to provide additional depreciation (of 20%) qua the eligible plant and machinery, with a view to provide a fillip to the industry, where put to use for the purpose. The condition of acquire and put to use, stated in s. 32(1)(iia), is basic to a claim of depreciation and, therefore, is to be read in that context. The law, however, restricting depreciation to 50% of that eligible where the asset under reference is put to use for less than 180 days during the relevant year, puts an artificial curb thereon. This would not be of much consequence in the normal course as the assessee would be, for the following year, entitled to depreciation on the WDV computed by reducing from its cost, thus, the depreciation actually allowed. However, in the case of additional depreciation u/s. 32(1)(iia), a one-time allowance, the said restriction, though applicable inasmuch as the depreciation u/s. 32(1)(iia) is only by way of an addition to that exigible u/s. 32(1)(ii), has no correlation with the WDV, though operates to bar the claim for the balance 50% where the asset is put to use for less than 180 days during the year of its acquisition, also rendering it discriminatory to the assessee who puts the asset to use for less than 180 days during the year of acquisition. Without doubt, that could not possibly be the legislative intent. And it is this that stands rectified per the amendment by way of third proviso, also removing the discrimination between the two sets of assessees, i.e., who acquire the asset, on the basis of the number of days it is put to use during the relevant year; clearly, an irrelevant criterion in the grant of additional depreciation. True, the words in s. 32(1)(iia) are 'acquired and installed', but then the same, as afore-noted, represent the twin conditions basic to a claim for depreciation, so that nothing turns thereon per se. That is, the same furnish the qualifying conditions for additional depreciation, since satisfied in the first year – AY 2014-15 in the instant case, itself. We, therefore, subscribe to the view per the decisions cited by the assessee in its favour.*

3.5 *We decide accordingly.*

4. *In the result, the assessee's appeal is allowed."*

8. We find that the decision by this Hon'ble Tribunal in ITA No.213/Coch/2023 is squarely applicable in the given facts and circumstances of the case and, accordingly, are of the view that the claim of unabsorbed depreciation of Rs.59,000

in respect of the assets acquired in preceding assessment year, i.e., A.Y. 2013-2014 u/s.32(1)(ia) of the Act is admissible for the current year, i.e., A.Y. 2014-2015. The impugned order passed by the Ld.CIT(A) and AO in this regard are set aside. With these observations, the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on this 19<sup>th</sup> Day of April, 2024.

**Sd/-**  
**(Sanjay Arora)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Anil Kumar Dugar)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 19<sup>th</sup> April, 2023.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), NFAC Delhi
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin