

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.4563/Del/2019, A.Y. 2015-16**

M/s. Avid Apparel Industries A-166, Ground Floor, Sector-41, Noida, Uttar Pradesh-201303 PAN: AAFW0362P	Vs.	ACIT, Circle 63(1), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Gunjan Jain, CA
Respondent by	Sh. Kanv Bali, Sr. DR

Date of Hearing	21/05/2024
Date of Pronouncement	31/05/2024

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM:**

This appeal of the Assessment Year [In short, the 'AY'] 2015-16, preferred by the assessee, challenges the order dated 18.03.2019, of the Commissioner of Income Tax (Appeals)-38, New Delhi [In short, the 'CIT(A)'].

2. The sole issue we are tasked to decide here, vide this appeal, is the quantum of disallowance of depreciation on the land.

3. The facts, in brief, are that the appellant/assessee, garment trader & exporter, filed its Income Tax Return (In short, the 'ITR') for the relevant year on 30.09.2015 declaring income of Rs. 14,51,040/-. The case was picked up for limited scrutiny and the consequential assessment was done at income of Rs. 57,72,520/- by making disallowance of (i) EPF and ESI of Rs.14,64,784/- paid after due date, (ii) depreciation of Rs. 27,69,573/- claimed on factory land and (iii) telephone expenses of Rs.87,122/-. The appellant/assessee had bought a factory along with land in the relevant year for Rs.4,33,80,175/- whose value as per the circle rate was Rs.5,01,22,000/-. The Assessing Officer [In short, the 'AO'] disallowed the depreciation claimed @ 10% on the land on the reasoning that the land was not a depreciable asset. Disallowance of depreciation on land was worked out by apportioning the cost of acquisition of land and factory building at the circle rate prevailing on the date of registration of the said property as per the chart below:-

	<b>Area</b>	<b>Rate</b>	<b>Circle rate (Rs.)</b>	<b>Purchase cost divided in ratio of circle rate (Rs.)</b>	<b>Depreciation @ 10% (Rs.)</b>
Building	1394	13000	1,81,22,000	1,56,84,441	15,68,444
Land	800	40000	3,20,00,000	2,76,95,734	27,69,573
			5,01,22,000	4,33,80,175	

4. Aggrieved, the appellant/assessee filed appeal before the CIT(A) who dismissed the appeal.

5. At the outset, the Ld. AR, in principle, admitted the disallowance of depreciation on land subject to the disallowance of depreciation on land apportioned in the ratio of prevailing circle rates of land and building at the time of agreement to sell; i.e. May, 2014. She drew our attention to the fact that the circle rate of land, on revision just before the registration of the sale deed of the property, had enhanced stamp duty payable as per circle rate only and not the purchase consideration paid to the seller of the property. Therefore, she prayed for apportionment of aggregate purchase consideration paid to the seller of the property and stamp duty amongst land and building in the ratio of the prevailing circle rate at the time of agreement; i.e. May, 2014 and not at the time of the registration of the sale deed of the property as worked out by the AO. To justify her claim, the Ld. AR put emphasis on the facts that the entire purchase consideration was paid to the seller of property at the time of agreement; i.e. May, 2014 and the revision of circle rate just before the registration. She also emphasized on the fact that the proportionate cost of land in the sale consideration had gone up to Rs.4,000/- per square meter due to steep revision of circle rate of land than that of building; hence she prayed that the hiked circle rate of land for stamp value purpose at the time of registration of the sale deed should not be taken as sole criteria for apportionment of purchase/sale consideration including stamp duty amongst land and building.

5.1 The Ld. AR further submitted that no payment was made to the seller during May, 2014 to October 2014. Meanwhile (May, 2014 to October 2014), the circle rate of the land was revised from Rs.27,000/- per Sq. Mtr. in May, 2014 to Rs.40,000/- per Sq. Mtr. in October, 2014. She submitted that the AO had not questioned the cost of acquisition of the property at Rs.4,33,80,175/- in October, 2014 (the enhancement in the cost is only due to increase in stamp duty at the time of registration of the property) than that of Rs.4,16,64,025/- in May, 2014. In such facts and circumstances, she argued for apportionment of cost of acquisition @ the circle rate prevailing at the time of the agreement to sell in May, 2014 over the circle rate prevailing at the time of registration of the property/sale deed in October, 2014 on the reasoning that the entire purchase consideration was paid to the seller of property on or before the agreement to sell entered into May, 2014. The Ld. AR submitted that the cost of land as per circle rate in May, 2014 worked out to Rs.2,16,00,000/- instead of Rs. 2,76,95,734/- worked out by the AO.

6. The Ld. Sr. DR putting emphasis on the clause-11 of the agreement to sell as under: -

*“11. The Vendor shall hand over the vacant, physical and peaceful possession of the Property to the Vendee at the time of the execution and registration of the transfer deed only after receipt of the sale consideration of Rs.3,95,00,000/- (Rupees Three Crores ninety-five lakhs only) in full.”*

Submitted that the AO has wrongly allowed depreciation @ 10% instead of 5% as the property was not taken into possession and put to use for business purposes before October, 2014 and therefore, he prayed that the appellant was not eligible for any relief on this score. As per the agreement to sell, the possession of the property was taken by the appellant/assessee before October, 2014; therefore, the Ld. Sr. DR argued for apportionment of cost of acquisition @ the circle rate prevailing at the time of the registration of the property/sale deed in October, 2014 and not at the time of agreement to sell in May, 2014 on the reasoning that the property was not in possession of the appellant/assessee in May, 2014. As per the transfer of Property Act also the property under reference did not get transferred to the appellant/assessee before October, 2014 though the appellant/assessee had claimed depreciation @ 10% of land.

7. We have heard both the parties at length and have perused the material available on the record. We find force in the argument of Ld. AR that the disallowance of depreciation on land needed to be done in the ratio of prevailing circle rates of land and building at the time of agreement to sell; i.e. May, 2014 as the entire purchase consideration of Rs.3,95,00,000/- was paid to the seller of property by the end of May 2014 and only registration of the property and incidental transfer charges remained to be paid after May 2014. The issue before us is only that whether the apportionment of cost of acquisition of the property between

the land and building done in the ratio of circle rate prevailing at the time of registration of the property by the AO is justified and not the rate of depreciation allowed by the AO.

8. In view of the facts in entirety and considering all the afore-stated observations, we are of the considered view that the apportionment of cost of acquisition of Rs.4,33,80,175/- have to be done in the ratio of the circle rate prevailing at the time of agreement to sell in May, 2014. Accordingly, we order so to disallow depreciation, as per law, on the land after working out its cost as above.

8. In the result, the appeal of assessee is allowed as above.

Order pronounced in open Court on 31<sup>st</sup> May, 2024.

Sd/-

**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Dated:31/05/2024  
B.R., Sr. Ps.

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI