

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

**Before Shri Waseem Ahmed, Accountant Member  
and Shri Soundararajan K., Judicial Member  
(Through virtual hearing)**

<b>ITA No. 229/Coch/2023</b> (Assessment Year:2005-06)		
Parisons Foods Pvt. Ltd. 6/1183, Kunhipari Buildings Calicut 673032  PAN – AACCP2898J  (Appellant)	vs.	DCIT, Circle - 1(1) Kozhikode    (Respondent)
Assessee by:	Shri Surendranath Rao, CA	
Revenue by:	Shri Ilaiyaraja, K.S., Sr. DR	
Date of hearing:	11.06.2024	
Date of pronouncement:	27.06.2024	

**ORDER**

**Per: Soundararajan K., J.M.**

This appeal filed by the assessee challenges the order of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 01.02.2023 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2005-06.

2. The assessee is in the business of refining and sale of crude edible oil and filed its return of income on 29.10.2005 and the assessment was completed under Section 143(3) of the Act by accepting the returns. Subsequently the CIT invoked his suo moto revision powers under Section 263 of the Act to disallow the additional depreciation claimed u/s 32(1)(iia) of the Act and directed the AO to complete the assessment de novo by considering the claim of additional depreciation of 15%. Thereafter the Id. AO

take up the issue and rejected the additional depreciation of 15% on the ground that the new plant installed has not increased the installed capacity. The Id. AO in his order stated that the increase in installed capacity should not be less than 10% and since there is no increase in the installed capacity the disallowance made by him is in order. Against which the assessee filed an appeal before the CIT(A) on the ground that the action of the Id. AO in not allowing the additional depreciation is not correct and also in view of the judgement of the Hon'ble Jurisdictional High Court. The CIT(A) dismissed the appeal and therefore the present appeal has been filed before this Tribunal.

3. The assessee has raised the following grounds of appeal: -

- “1. The order of the Assessing officer is against law and facts.*
- 2. The Commissioner of Income Tax (Appeals) should have appreciated that the actual output is of no relevance in deciding the eligibility to the claim. The Commissioner of Income Tax (Appeals) has clearly misdirected himself in not allowing the claim on the ground that the output for the year has not increased compared to that of the previous year. The installed capacity of the old machine was 90,000 MT for oil refinery only and during the year the appellant had installed a 300 Tons Per Day (TPD) fractionation plant. Merely because the installed capacity of the final product has not gone up it does not mean that the appellant is not eligible for additional depreciation. The only requirement as per section 32(1)(iia) was that it achieves the substantial expansion by way of increase in installed capacity by not less than ten percent. The increase in capacity could be that of an intermediary product also. Your appellant would like to submit that after the expansion project, the installed capacity was enhanced to 90,000 MT for oil refining and 90,000 MT for fractionation from zero earlier.*
- 3. It was not correct on the part of the Commissioner of Income Tax (Appeals) to compare the audited financials of current and previous years and conclude that based on decrease in production and production related expenditure, installed fractionation plant and machinery as claimed by the appellant does not have a positive contribution to the output of the product or intermediate product. The Commissioner of Income Tax (Appeals) has erred in concluding that there is no increase in*

*installed capacity by comparing the actual production achieved which could vary due to entirely different reasons.*

4. *The Commissioner of Income Tax (Appeals) has erred in ignoring the argument that if at all the Assessing Officer was of the opinion that additional depreciation was not allowable, then he should have added the amount of additional depreciation claimed to the closing Written Down Value (WDV) as on 31.03.2005 and allowed depreciation for the succeeding years on the enhanced WDV which should have been automatic.”*

4. At the time of hearing the learned A.R. of the assessee submitted that the installed capacity of the old plant was 90,000 MT for oil refinery and after installation of new plant the installed capacity has increased to 90,000 MT for oil refining and 90,000 MT for fractionization. The learned A.R. further submitted that by way of the fractionation process, the palm oil is separated into two products, namely the RBM Palmolein and Palm Stearine, which are different commercial commodities and therefore the installed capacity has been increased to 90,000 MT for oil refining and another 90,000MT for fractionization and therefore the assessee is eligible to claim the additional depreciation u/s 32(1)(iia) of the Act. The ld AR further contended that the criteria to claim the additional depreciation is not the increase in output but the increase in the installed capacity and in the assessee's case the same has been achieved. The ld AR made an alternate argument that, if the above argument is not accepted the additional depreciation should be added to the written down value and depreciation should be granted on the enhanced value in the succeeding years. The learned A.R. also filed a paper book enclosing the New Industrial Undertaking certificate and the audited financials for the year ended 31.03.2005 and relied on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT v. Hindustan Newsprint Ltd.* 183 Taxman 257 (Ker) and prayed to allow the appeal.

5. The learned D.R., on the other hand, relied on the orders of the lower authorities and prayed to dismiss the appeal of the assessee.

6. We have heard the rival contentions and perused the materials on record. We perused the New Industrial Undertaking certificate available in the paper book and as per the Part A and B of the Annexure B of Form No.3AA, it is evident that the assessee had an installed capacity of 90,000 MT as on 31.03.2004 to refine the crude oil whereas after installing the new fractionization plant during the current year 2004-05, the assessee had added additional 90,000 MT installed capacity for producing RBM Palmolein and Palm Stearine by fractionation. The RBM Palmolein is an edible one and the Palm Stearine is used in the manufacture of soap and therefore there is an increase in the installed capacity of the plant. We have also perused the annexure to the report filed u/s 32(1)(iia) and found that the assessee had installed the Fractionization plant for a total cost of Rs 4,77,92,357.77 during the year 2004-2005. In view of the above facts and circumstances the finding of the Id. AO and the learned CIT(A) that there is no increase in the installed capacity is not correct. The lower authorities had not taken into consideration the increase in the additional installed capacity by 90,000 MT and the production of RBM Palmolein and Palm Stearine. Further comparing the production and sales of the current year with the previous year and arriving a conclusion that the installed capacity has not increased, is also not correct and not in accordance with the provisions of the Act. The only criterion to be looked into is whether the installed capacity has been increased or not. Admittedly in the present case the installed capacity has been increased from 90,000 MT to 1,80,000 MT and the assessee had manufactured RBM Palmolein and Palm Stearine through the additional capacity created and therefore the assessee is entitled for additional depreciation irrespective of the decrease in production and sales of the earlier commodity. We found that the judgement of the Hon'ble Jurisdictional High Court in the case of Hindustan Newsprint Ltd. (supra) is directly on the point in which it was held as under: -

*“..... However the assessee's case as is clear from the orders of the authorities below including the Income-tax Tribunal is that there is increase in installed capacity of pulp and pulp though an intermediary product also is marketable and hence assessee is entitled to additional depreciation under the above provision. Standing counsel for the revenue contended that installed capacity of an industry should always be understood with reference to the final product manufactured and sold by it. Even though there cannot be any doubt on this proposition there is nothing to indicate that the respondent-assessee cannot sell pulp as a product. The fact that pulp is an intermediary product and is generally consumed captively in the manufacture of newsprint does not mean that pulp is not a product that cannot be marketed by the respondent as and when they desire. There is no dispute that pulp is a marketable commodity. If there is reduction in the manufacture of final product on account of any reason, necessarily respondent will have to market the excess pulp produced. So much so we agree with the view of the Tribunal that pulp being a marketable commodity produced by the respondent, the increase in the installed capacity of the pulp plant on account of the installation of the de-inking machinery will entitle the respondent for the benefit of additional depreciation. The finding of the Tribunal that there has been increase in the installed capacity of the production of pulp in terms of the requirement of the provision in the statute is not disputed in the appeal filed by the revenue. On the other hand their contention is that the installed capacity should have reference to only final product that is newsprint. We are unable to uphold this contention of the revenue and we feel that the intermediary product viz., pulp produced by the company being a marketable commodity the increase in the installed capacity for claiming benefit of additional depreciation under the above provision can be in the production of intermediary viz., pulp. We therefore agree with the finding of the Tribunal and dismiss the department appeal.”*

7. In the present case also the assessee had increased its installed capacity by installing the new plant and obtained a by product i.e., Palm Stearine and marketed the same to the soap industries. We are, respectfully following the above principles laid down by the Hon'ble High Court, hold that the assessee had increased its installed capacity by more than 10% as contemplated under the provisions of the Act and therefore eligible for the additional depreciation u/s 32(1)(iia) of the Act.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27<sup>th</sup> June, 2024.

Sd/-  
**(Waseem Ahmed)**  
**Accountant Member**

Sd/-  
**(Soundararajan K.)**  
**Judicial Member**

Bengaluru, Dated: 27<sup>th</sup> June, 2024  
n.p.

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2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Cochin*
5. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Cochin*