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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 682/Bang/2024
Assessment Years: 2017-18

Hassan Co-operative Milk Producers Societies Union Limited, Dairy Complex, B.M Road, Industrial Area, Hassan – 573 201. **PAN – AAAAH 0229 B**	Vs.	The Asst. Commissioner of Income Tax, Circle – 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, Advocate
Revenue by	:	Shri Ramanathan, Addl. CIT (DR)

Date of hearing	:	12.06.2024
Date of Pronouncement	:	29.07.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 15/02/2024 in DIN No. ITBA/NFAC/S/ 250/2023-24/1060964671(1) for the assessment year 2017-18.

2. The first issue raised by the assessee is that the ld. CIT(A) erred in confirming the disallowance made by the AO for Rs. 30,20,002/- for the claim made u/s 32(1)(iia) of the Act.

2.1 The AO during the assessment proceedings disallowed the additional depreciation claimed by the assessee by observing that the

assessee is not engaged in the manufacturing activities, which is necessary for claiming such additional depreciation. Thus, the AO disallowed the sum of Rs. 30,20,002/- representing additional depreciation under section 32(1)(iia) of the Act and added to the total income of the assessee. On appeal, the ld. CIT(A) upheld the finding of the AO.

3. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

4. The learned AR before us filed a paper book running from 1 to 40 pages and contended that the ITAT in the assessee's own case in ITA No. 1509/Bang/2018 for the assessment year 2014-15 has held that the assessee is engaged in the manufacturing activity. As per the ld. AR, the facts of the case on hand are identical to the facts of the case for the earlier assessment year i.e. AY 2014-15. Therefore, the assessee cannot be denied the benefit of additional depreciation provided u/s 32(1)(iia) of the Act.

5. On the other hand, the ld. DR could not controvert the arguments advanced by the ld. AR appearing for the assessee, but vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case on hand are identical to the facts of the case of the assessee in the earlier year cited supra, wherein it was held as under:

> *"7. We heard the rival contentions on this issue and perused the record. The provisions of section 32(1)(iia) reads as under: "(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*

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business of generation or generation and 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)" :

A careful perusal of the above said provision would show that the above said provision only states that the assessee claiming additional depreciation u/s 32(1)(iia) of the Act 'should be engaged in the business of manufacture or production of any article or thing etc.' It does not state that the new machinery or plant should itself be used in manufacture of any article or thing. The question whether the machinery itself is required to be used in the business of manufacture or production for allowing additional depreciation u/s 32(1)(iia) of the Act was examined by the coordinate bench in the case of Texas Instrument (supra) and it has been held as under:

"18. We have heard the submissions of the learned counsel for the Assessee and the learned DR. The provisions of Sec.32(1)(iia) of the Act based on which the additional depreciation was claimed by the Assessee reads thus:

"Sec.32 Depreciation.

(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: "

(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, 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):

"19. A bare reading of the aforesaid provisions shows that the new machinery or plant should be used by an assessee engaged in the business of manufacture or production of any article or thing and the new machinery or plant need not be used in manufacture or production of any article or thing. The learned counsel has before us relied on the decision of the Hon'ble Madras High Court High Court in the case of CIT v. VTM Ltd. [2010] 187 Taxman 319/[2009] 319 ITR 336 (Mad.) wherein the assessee-company was engaged in the business of manufacture of textile goods. During the relevant

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assessment year, it had set up a wind mill for generation of power and claimed additional depreciation thereon under section 32(1)(iia). The Assessing Officer disallowed the claim on the ground that the assessee was engaged only in the manufacture of textile goods and the setting up of a wind mill had absolutely no connection with the manufacture of textile goods. However, the Commissioner (Appeals) as well as the Tribunal allowed the assessee's claim of additional depreciation. On appeal to the High Court, the Hon'ble High Court held that for application of section 32(1)(iia) what is required to be satisfied in order to claim the additional depreciation is that a new machinery or plant, which has been set up, should have been acquired and installed after 31-3- 2002 by an assessee, who was already engaged in the business of manufacture or production of any article or thing. The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed after 31-3-2002 should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a windmill had nothing to do with the manufacture of textile goods was totally not germane to the specific provision contained in section 32(1)(iia). In the light of the aforesaid decision, we are of the view that one of the basis on which the revenue authorities disallowed the claim of the Assessee for disallowance of additional depreciation cannot be sustained."

8. Hence, we are convinced with the alternative contention of the assessee. We have earlier noticed that the A.O. has allowed additional depreciation on machineries used for manufacture of butter, ghee, pedha, etc., which clarifies that the assessee is engaged in the business of manufacture or production of any article or thing. Hence, as per the ratio laid down by coordinate bench in the case of Texas Instruments Ltd. (supra), the assessee would be eligible for additional depreciation on other machineries also, even if those machineries are not used in the manufacture or production of article or thing.

9. With regard to the claim of the assessee that the processing of milk would amount to manufacture, we notice that the decision rendered by the special bench in the case of B.G. Chitale (supra) goes against the assessee. Even under the definition of the term "manufacture", processing of milk will not result in manufacture of article or thing, since the product "milk" remains as "milk" even after processing. Accordingly, we reject the above said contentions of the assessee.

10. Since we have accepted the alternative contentions of the assessee, we hold that the assessee is eligible for additional depreciation on the plant and machinery used for processing of milk also and accordingly direct the A.O. to grant the same to the assessee.

6.1 Respectfully following the above cited decision of the ITAT in the own case of the assessee for the assessment year 2014-15, we set aside the finding of the ld. CIT-A and direct the AO to grant the additional

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depreciation to the assessee as discussed above. Hence, the ground of appeal of the assessee is hereby allowed.

7. The next issue raised by the assessee is that the ld. CIT(A) erred in denying the deduction u/s 80P(2)(b) of the Act amounting to Rs.23,77,901/- representing the rental income from milk parlor.

7.1 The AO during the assessment proceedings held that the assessee is not a primary agricultural society and the income in dispute is also not arising from the supply of milk activity. As such, income of Rs. 23,77,901/- represents the rental income from milk parlor. Therefore, the AO disallowed the same and added to the total income of the assessee.

8. Aggrieved, assessee preferred an appeal to the ld. CIT(A), who confirmed the order of the AO.

9. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

10. The ld. AR before us could not controvert the findings of the authorities below. On the other hand, the ld. DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The ld. AR before us could not controvert the finding given by the ld. CIT(A). The rental income in dispute is not arising from the activity of milk supply and, therefore, the same cannot be allowed as deduction u/s 80P(2)(b) of the Act. Hence, the ground of appeal of the assessee is hereby dismissed.

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12. The next issue raised by the assessee is that the ld. CIT(A) erred in confirming the disallowance made by the AO with respect to the interest earned from the co-operative banks.

13. The AO during the assessment proceedings, found that the assessee has claimed deduction amounting to Rs. 1,12,28,214/- representing the interest income from the co-operative/commercial banks. As per the AO, such income is not arising from the members/ co-operative societies and, therefore, the same is not eligible for deduction u/s 80P(2)(a)(i)/(d) of the Act. Thus, the AO disallowed the same and added to the total income of the assessee. On appeal, the ld. CIT(A) confirmed the order of the AO.

14. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

15. The ld. AR before us did not challenge the findings of the authorities below but merely made submission stating that the corresponding cost against the interest income should be allowed as deduction while making the disallowance under the provisions of sec. 80P(2)(d) of the Act. On the other hand, the ld. DR vehemently supported the order of the authorities below.

16. We have heard the rival contentions of both the parties and perused the materials available on record. It is a trite law that the gross amount of interest income from the co-operative/commercial bank cannot be considered while calculating the disallowance u/s 80P(2)(d) of the Act. As such, it is only net interest income after deducting the corresponding cost should be considered for the purpose of disallowance. Accordingly, we set aside the issue to the file of the AO

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for fresh adjudication as per the provision of law after allowing the deduction of the corresponding cost while calculating the disallowance u/s 80P(2)(d) of the Act with respect to the interest income from commercial/co-operative banks. Hence, the ground of appeal of the assessee is hereby partly allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 29th day of July, 2024

Sd/-	Sd/-
(GEORGE GEORGE K)	**(WASEEM AHMED)**
Vice President	Accountant Member

Bangalore,
Dated, 29th July, 2024

Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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