

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.903/Chny/2024
निर्धारणवर्ष/Assessment Year: 2016-17

M/s.Kosei Minda Aluminum – Co. Pvt. Ltd., 20/A & 20/B, SIPCOT Industrial Growth Centre, Kolathur Rf. Kanchipuram, Vadakkupattu B.O. – 603 204	v.	The ACIT, Corporate Circle-4(2), Chennai.
[PAN: AADCV 5849 G]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N. V. Krishnan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	09.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Chennai-16, dated 05.02.2024 for the Assessment Year (hereinafter in short "AY") 2016-17.



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2. The main grievance of the assessee is against action of the Ld.CIT(A) sustaining the disallowance made by the AO u/s.32AC of the Income Tax Act, 1961 (hereinafter in short "the Act") to the tune of Rs.5,00,04,962/-.

3. The brief facts are that the AO noted that the assessee has filed its return of income for AY 2016-17 on 30.11.2016 admitting loss (-) of Rs.12,24,89,030/-. The AO noted that the assessee has claimed deduction u/s.32AC of the Act and submitted the list of new assets claimed to be acquired during the previous year relevant to AY 2016-17, which was only to the tune of Rs.14,72,45,741/- (according to the assessee, correct figure was Rs.14,75,96,240/-) and further the AO noted that the list also included assets which have been acquired during the earlier AY 2015-16 to the tune of Rs.18,57,70,173/-. Therefore, according to the AO, the actual cost of new assets acquired during the relevant year under consideration is only Rs.14,72,45,741/- (which according to the assessee is Rs.14,75,76,240/-); and since the cost of new assets acquired during the previous year didn't exceed Rs.25 Crs., the AO held that the assessee was not eligible for deduction u/s.32AC of the Act; and thus, he disallowed the deduction claimed to the tune of Rs.5,00,04,962/-.



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. We note that the assessee company M/s.Kosei Minda Aluminum Co. Ltd., (hereinafter in short "M/s.KMACL") had filed its return of income declaring loss of Rs.12,24,89,030/-. Later, the case of the assessee was selected for scrutiny and the AO noted that the assessee had made a claim of deduction u/s.32AC of the Act, for the following assets:

Particulars	Amount in Rs.
14050/24.12.2014	1,79,01,605
14035/13.01.2015	1,91,20,995
14036/13.01.2015	2,66,58,602
14048/23.01.2015	6,57,23,628
14037/01.03.2015	1,70,80,827
14038/01.03.2015	2,61,66,014
14027/18.11.2014	1,31,18,502
Plant and Machinery acquired during the FY 2014-15	18,57,70,173
Total additions made in the FY 2015-16	33,33,66,413
Plant and Machinery acquired in the FY 2015-16	14,75,96,240
Plant and Machinery acquired in the FY 2015-16 as per the Assessment Order	14,72,45,741
Difference	3,50,499

7. The AO after verification of the claim noted that the assessee had only acquired plant & machinery (assets) in the previous year (AY 2016-17) worth Rs.14,75,96,240/- (*in the Assessment Order, the AO has noted the value of assets at Rs.14,72,45,741/-*) and since assessee didn't



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acquire new assets exceeding Rs.25 Crs. he was of the opinion that assessee was not eligible for deduction claimed u/s.32AC of the Act. Therefore, he disallowed the deduction claimed u/s.32AC of the Act to the tune of Rs.5,00,04,962/-. The main plea of the assessee is that depreciation/deduction/allowance is allowable from the date of installation i.e. when the assets are *put to use* rather than from the date of acquisition. According to the assessee, it is settled position of law that an asset [*plant & machinery (new asset)*] when "acquired and installed" only can claim depreciation; and that the event of acquisition of an asset wouldn't determine the claim of depreciation; and that it was only when the asset is put to use/installed, the assessee would be eligible to claim depreciation; and therefore in the present case, according to Ld AR, even though, assessee had acquired assets in AY 2015-16, it was put to use/installed only in the relevant year i.e. AY 2016-17, and therefore, total value of assets would exceed Rs.25 Cr. and so is eligible for deduction u/s.32AC of the Act; and that AO/CIT(A) erred in disallowing it. In order to adjudicate the issue in hand, it would be gainful to reproduce sec.32AC of the Act, which reads as under:

[Investment in new plant or machinery.

32AC (1A) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets [acquired during any previous year exceeds twenty-five crore rupees and such assets are installed on or before the 31st day of March, 2017], then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new assets for the assessment year relevant to that previous year.



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Provided that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed:

8. A bare reading of the aforesaid provision would reveal that if an assessee (*being a company*) is engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired during any previous year exceeds Rs.25 Crs. and such assets are installed on or before 31st day of March, 2017, then, deduction of a sum equal to 15% of the actual cost of such new asset for the AY relevant to that previous year shall be allowed as deduction. The proviso also makes it clear that where the installation of new asset are in a year other than the year of acquisition, then the deduction shall be allowed in the year in which new assets are installed. We note from the perusal of the records that there is no dispute that the assessee company is engaged in the business of manufacture or production of article or thing. It isn't disputed that it acquired new assets amounting to Rs.18,57,70,173/- in AY 2015-16 and also acquired new plant & machinery in AY 2016-17 to the tune of Rs.14,75,96,240/- totaling Rs.33,33,66,413/-. According to the assessee, it has acquired the new assets in AY 2015-16 & 2016-17, but installed them in the relevant year i.e. AY 2016-17, therefore, it qualifies for deduction u/s.32AC of the Act. Now, the question is whether in the facts and circumstances of the case, the assessee can claim depreciation of



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15% of the actual cost of such new assets u/s.32AC(1)(a) of the Act in the year under consideration i.e AY 2016-17. The answer is in the affirmative. In other words, assessee has rightly claimed the deduction of a sum equal to 15% of the actual cost of new assets acquired during AY 2015-16 & 2016-17 in the relevant assessment year i.e. AY 2016-17, since it installed such new assets in AY 2016-17. A combined reading of Sec.32AC(1A) and proviso to it, spells out the conditions required to be satisfied for claiming deduction u/s.32AC of the Act. First condition is that assessee must be a company. Second condition is that it must be engaged in the business of manufacture or production of any article or thing. Third is that it acquires and installs any new assets. Fourthly, the actual cost of such new assets exceeds Rs.25 Crs. Fifthly, such assets are installed on or before 31st March, 2017. And the proviso inserted by Finance Act, 2016 w.e.f. 01.04.2016 allays all doubts that if installation of the new asset are in a year other the year of acquisition [exactly as in this case, the assets worth Rs.18,57,70,173/- was acquired in AY 2015-16], in such an event, the deduction u/s.32AC of the Act shall be allowed in the year when the new assets are installed. Therefore, what has to be seen in this case is that whether the plant & machinery acquired in AY 2015-16 & 2016-17 has been installed on or before 31.03.2017 and the value of such assets exceeds Rs.25 Crs. or not. In this case, the assessee has acquired the plant & machinery in AYs 2015-16 to 2016-17 as noted



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supra and has put to use or installed it on 25.04.2015, which was certified vide Installation Certificate O.C.No.568/2015 dated 28.09.2015 by the Office of the Superintendent of Central Excise, Oragadam-I-Range, Poonamallee, Chennai, which reads as under:

INSTALLATION CERTIFICATE

Certified that the following Capital Goods imported by of M/s.KOSEI MINDA ALUMINUM COMPANY PRIVATE LIMITED Under EPCG licence Scheme have been found installed in their factory premises situated at RNS.20A & 208, Renault Nissan Supplier Park, Vadakkupattu Village, Sriperumbudur Taluk, Kanchipuram Dist-603 204. The details of Machineries imported, Qty, BOE No, Date, EPCG License No. Date are furnished.

Sl. No	Description of Goods/	Bill of Entry No.	Invoice No & Date	Qty	EPCG License No/ & Date	Installation Date
1	Rotary Heat treatment furnace and Aging Furnace	8352728/ 18.02.2015	KITI- KMA-14048 DT:23.01.2015	1 Set	0430014314 Dt:31.12.2014	25.04.2015
2	Okuma CNC lathe for Aluminum Wheels, LAW- F-II OP-1 Chuck FG56L	8163073/ 31.01.2015	KITI-KMA-14036 DT:31.01.2015	2 SET	0430014314 Dt:31.12.2014	25.04.2015
3	Okuma CNC lathe for Aluminum Wheels, LAW- F-II OP-2 Chuck FG56L	8722133/ 26.03.2015	KITI-KMA-14038 DT:26.01.2015	2 SET	0430014314 Dt:31.12.2014	25.04.2015
4	Brother Brand Compact Machining Centre	7979812 / 13.01.2015	KITI-KMA-14027 DT:18.11.2014	2 SET	0430014314 Dt:31.12.2014	25.04.2015
5	Melting & Holding Furnace for Kosei Minda	8722133/ 26.03.2015	KITI-KMA-14037 DT:01.03.2015	2 SET	0430014314 Dt:31.12.2014	25.04.2015
6	Tilt Pour Casing Machine with Standard Accessories Model No. AWCT	8058332 /21.01.2015	KITI-KMA-14035 DT:18.11.2013	2 SET	0430014314 Dt:31.12.2014	25.04.2015



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9. According to the Ld.AR, cost of the plant & machinery acquired during the AY 2015-16 is Rs.18,57,70,173/- and the plant & machinery acquired in AY 2016-17 is Rs.14,75,96,240/-. Thus, total plant & machinery for both the years is Rs.33,33,66,413/- exceeds Rs.25 Crs. and since, these assets were put to use on 25.04.2015, assessee qualifies/eligible for deduction u/s.32AC of the Act. However, Installation Certificate reproduced (supra) in no way gives any indication of the cost of the plant & machinery acquired in AY 2015-16 & 2016-17. Therefore, we set aside the impugned order of the Ld.CIT(A) and remand the matter back to the file of the AO for a limited purpose of ascertaining the cost of the machinery acquired in AY 2015-16 as well as AY 2016-17 and thereafter, if it is found that the cost of the plant & machinery for both years exceeds Rs.25 Crs, then, deduction u/s.32AC(1)(a) of the Act, shall be allowed. Needless to say that assessee be granted proper opportunity to file the required/relevant documents to substantiate the cost of plant & machinery for both the Assessment Years.

10. The assessee has raised **Ground No.7**, wherein, he assails the action of the Ld.CIT(A) sustaining the disallowance made by the AO with regard to deduction claimed as foreign exchange on capital assets of Rs.5,51,233/-. We note that the Ld.CIT(A) has not adjudicated the



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Ground No.6 raised by the assessee and it is noted that the AO has decided the claim as under:

3. It is seen from the computation of Total Income submitted by Assessee, of Rs.5,51,233/- has been deducted as Foreign exchange on capital assets. However, it is seen that there was no corresponding decrease/ deduction from assets as seen from the depreciation table.

3.1 Vide notice U/s142 (1) of the IT act, dated 23.10.2019 the assessee called to give details and explanation in respect of the same as follows:

3.2 "Please give details of assets on which the exchange gain is claimed as deduction. Explain why corresponding adjustment was not made while computing depreciation".

3.3 However, assessee has not given any details or explanation regarding this. It is pertinent to note that Assessee in its reply dated 01.11.2019 has given details and reply in respect of another details called for vide notice u/s142 (1) dated 23.10.2019, but remains silent on this issue.

3.4 As per provisions of section 43A of the Act, the adjustment made on account of Foreign exchange fluctuation in respect of capital assets have to result in corresponding adjustment in the cost of asset.

3.5 As the assessee has not given any supporting documents with regard to its claim, the deduction of Rs.5,51,233/- claimed as "foreign exchange on capital assets" while computing the Total Income is disallowed.

(Add: Rs. 5, 51,233/-)

11. A reading of the assessment order (supra) reveals that the assessee hasn't given any supporting documents with regard to its claim of deduction of Rs.5,51,233/- even though, called for by the AO, which resulted in disallowance of the claims; and the Ld.CIT(A) has not decided **Ground No.6** raised before him. It is also noted that on this issue, there is no written submissions filed before the Ld.CIT(A). Be that as it may, since we have remanded the matter back to the file of the AO regarding deduction claimed u/s.32AC of the Act (supra) albeit for limited purpose, the assessee is given an opportunity to file the relevant documents to



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substantiate its claim on this issue and the AO to pass orders in accordance to law; and if the assessee fails to file relevant documents to substantiate its claim, especially which was called for by the AO in the first round, then, the AO to confirm the addition.

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

Order pronounced on the 21st day of August, 2024, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 21st August, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF