

**आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

**आयकरअपील सं./ ITA No.3318/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2013-2014)**

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(1)
Chennai 600 034.

Vs. M/s. A B Mauri India Private Ltd,
Plot No.218 & 219 Bommasandra
Jigani Link Road, Rajapura Hobli,
Jigani, Anekal Taluk.
Bengaluru 560 105.

(अपीलार्थी/Appellant)

[PAN:AAECA 9923H]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Ms. Kavitha, IRS, Addl. CIT.
: Shri S P Chidambaram, Advocate

सुनवाई की तारीख/Date of Hearing

: 20.11.2024

घोषणा की तारीख /Date of Pronouncement

: 25 .11.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Chennai in order dated 18.09.2018. The assessment was framed by the Assistant Commissioner of Income Tax (OSD), Corporate Range 1, Chennai for the assessment year 2013-14 u/s.143(3) r.w.s.144C (3) r.w.s.92CA of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 10.02.2017.

2. Brief facts of the case are that assessee is engaged in the business of Manufacturing and sale of bakery products. The assessee company filed its return of income for the A.Y. 2013-14 on 30/11/2013 admitting Current year loss of Rs. 18,15,79,128/-. The case was selected for scrutiny through CASS and notice u/s. 143(2) of the Act dt.03/09/2014 was served on the assessee. The case was notified to the office of the Assistant Commissioner of Income Tax (OSD) Corporate Range 1, Chennai vide Pr.CIT-1's notification in C.No.236B /Scrutiny Notification/Pr.CIT-1/2016-17 dated 28.07.2016. Subsequently notice u/s 143(2) read with section 129 of the Act dated 01.08.2016 was sent to the assessee intimating the change in jurisdiction. In response to the notice issued, the Authorized Representative of the assessee company appeared and filed the details sought. The Id. Assessing Officer noted that on the depreciation schedule attached to the form 3CD, that an amount of Rs. 6,42,28,437/- was the amount of addition to ETP plants and machinery wherein depreciation at the rate of 100% totaling to Rs. 3,41,93,848/- was being claimed. According to the Id. Assessing Officer all the machineries in the Effluent Treatment Plant (ETP) in its entirety does not qualify for 100% depreciation. However, the assessee claimed depreciation on the entire plant and machinery. The claim of the assessee on this issue was denied in the earlier years also for the reasons that the assessee could not give the list of eligible equipment of its ETP plant. The excess depreciation claimed was disallowed and the eligible depreciation were worked out as under:-

Opening WDV		Rs. 18,60,803/-
Depreciation @ 15% (15% of 2298455)		Rs. 3,44,768/-
Depreciation @ 7.5% (7.5% of 63790785)		Rs. 47,84,309/-
Total depreciation allowable		Rs. 51,29,077/-
Excess claim to be disallowed		Rs. 2,90,64,771/-

Accordingly, the Id. Assessing Officer disallowed a sum of Rs. 2,90,64,771/- and the added back the same to the total income of the assessee company.

2.1 The assessee also claimed depreciation @25% for the Non-Compete fee. As per the assessee Section 32(1)(ii) of the Act demonstrates "other commercial rights of similar natures" includes Non-Compete Fee. However, the Id. Assessing Officer denied the same on the ground that assessee's claim for the earlier assessment years were disallowed and added a sum of Rs.4,59,863/- to the total income of the assessee.

2.2 The Id. Assessing Officer also disallowed a sum of Rs.2,48,491/- on the reasoning that assessee has failed to credit the employees contribution to Provident Fund of Rs.1,14,063/- and ESI of Rs.1,34,428/- before the prescribed due dates. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

3. Before the Id. CIT(A), assessee contended that the plant & machinery installed in the ETP have been classified under Water Pollution Control Equipment falling under Entry III(3)(ix) to the depreciation schedule in New Appendix I to the Rules (hereinafter referred to as 'depreciation schedule']. The assessee further submitted that the entire plant & machinery capitalized in the ETP is inextricably connected and forms an integral part of the ETP and, therefore, Water Pollution Control Equipment should be considered to mean the entire plant & machinery installed in the ETP and cannot be restricted only to specific equipment(s) forming part of the ETP since the Water Pollution Control Equipments cannot function in isolation without the aid of supporting plant & machinery running it. Further contention raised by the assessee was that the broad intention of the legislature was to encourage/support industries in helping them comply with the environmental guidelines on effluent discharge to control water pollution and accordingly, the legislature has introduced higher rate of depreciation on Water Pollution Control Equipments. Ld. CIT(A) has accepted the argument of the assessee that , the ETP is a combination of a number of parts and machineries which all put together makes it a complete system for treatment of wastewater. The process involved in ETP is that the effluents discharged will pass through the electro oxidation process and then through Ultra Filter, Nano Filter and Reverse Osmosis. All these filters are membrane based. Further pumps are needed to bring effluent from the main plant to the effluent treatment plant. Again, within the effluent treatment plant, pumps are needed to pass the effluent from one process to the other or from one

membrane system to the other membrane system. All these electrodes, pumps and filters all put together makes it a complete system for treatment of waste water. Membranes would be of no use if water is not pumped to it through it. Therefore, as rightly contended by the assessee, the P&M comprising of various equipments which have been enlisted as per the Entry III(3) (ix) of the New Appendix I to the Rules capitalized under ETP has to be considered for depreciation at the rate of 100%. The Id. CIT(A) also relying on the decisions of Mumbai Bench of the Tribunal in the case of *Anushakti Chemical & Drugs Ltd vs. Addl. CIT(2016) 71 taxmann.com 320* and also Delhi Bench of the Tribunal in the case of *ACIT vs. Omax Auto Ltd in ITA No.2928/Del/2009* allowed depreciation @100% as claimed by the assessee.

3.1 With regard to Non compete fees, the contention of the assessee before the Id. CIT(A) is that non- compete right is an intangible asset in the nature of 'any other commercial rights of similar nature' qualifying for claim of depreciation as per Section 32(1)(ii) of the Act. It is further contended that the depreciation on non-compete fee having been held to be allowable in the initial year of capitalization, i.e., AY 2001-02 by the Hon'ble Income Tax Appellate Tribunal, Chennai, the AO has erred in not following the binding decision of the jurisdictional Tribunal in the Appellant's own case for the AY 2001-02 and AY 2003-04. The Id. CIT(A) after considering the submissions of the appellant came to a conclusion that assessee is entitled for depreciation @25% for the Non-Compete fee since the Hon'ble jurisdictional ITAT for the assessment years 2001-02 and 2003-04 had allowed the

claim of the assessee. Accordingly he deleted an addition of Rs.4,59,863/- made by the Id. Assessing Officer.

3.2 The last issue raised by the assessee before the Id. CIT(A) is with regard to disallowance u/s.36(1) (va) of the Act. The contention of the assessee is that employees' contribution to PF/ESI cannot be disallowed as long as the payments have been made within the due date of filing the return of income u/s 139(1) of the Income Tax Act. The assessee further submitted that contribution to PF is an item covered under section 43B of the Act and as such a differential treatment cannot be adopted for the same item of deduction. Reliance was also placed on the decision of the Hon'ble jurisdictional High Court in the case of *Industrial Security & Intelligence India Private Limited, TCA No. 858 and 586 of 2015* wherein it has been categorically held that no disallowance of employees' contribution to PF can be made if such contributions have been deposited before the due date of filing of return of income u/s 139(1) of the Income Tax Act. The Id. CIT(A) following the above decision of the jurisdictional Hon'ble High Court directed the AO to verify whether the impugned amounts had been deposited by the assessee before the due date of filing of return of income u/s 139(1) of the Income Tax Act, if the same is found in order, the claim should be allowed, However, if part of the contribution or the whole contribution remains payable on the date of filing of return of income u/s 139(1) of the Act, the same needs to be disallowed. The Id. CIT(A) subject to this verification, allowed the claim of the assessee.

4. We have heard the rival contention and perused the material on record. The Id. Departmental Representative strongly argued that the Id.CIT(A) has admitted additional evidence without giving opportunity to the AO. On perusal of the Id.CIT(A)'s order, it is observed that Id.CIT(A) has not called for any remand report from the AO. It is an admitted fact by the AR that the assessee had submitted Chartered Engineers certificate which was not submitted before AO. The said certificate contains list of machinery. Therefore, the Id.CIT(A) has violated Rule 46A of the Income Tax Rules. Accordingly, the Ground related to Depreciation on Effluent Treat Plant is set-aside to the file of Assessing Officer. The AO is free to conduct necessary enquiries and assessee is given liberty to file all the documents before the AO. The AO shall pass order after giving opportunity of being heard to the assessee. Therefore this ground raised by the Revenue is allowed for statistical purposes.

4.1 The next issue raised by the Revenue is with regard to depreciation on non-compete fee. This issue is squarely covered in favour of the assessee by the order of the Co-ordinate Bench of this Tribunal in assessee's own case vide order dated 23.11.2022 in ITA No.3315/Chny/2018 for assessment year 2010-2011, wherein it was held as under:-

'7. We have heard both the parties and perused the records. The ITAT Chennai Bench in ITA No.1520/Mds/2007 for A.Y.2001-02 has held as under:

"2. In this ground, it has been contended by the assessee that the CIT(A) erred in confirming the disallowance of depreciation on non-compete fee of Rs.5,30,00,000/-.

3. We find that this issue is covered in favour of the assessee by the decision of ITAT, Chennai in the case of M/s. Medicorp Tech. India Ltd. (2009) 122 TTJ (Chennai) 394. It is seen that Shri Shaji P Jacob, was the learned DR who had argued the appeal in the case of M/s. Medicorp Tech. India Ltd. (supra). His arguments were discussed by the Tribunal, in detail, in its order dated 16.01.2009. In fact, one of us was the author of that order. The facts of the case in the present appeal are identical and therefore, we follow the precedent and allow this ground."

7.1 Therefore, respectfully following the ITAT Chennai Bench's decision in assessee own case for A.Y.2001-02 we hold that assessee is eligible for depreciation on non-compete fee. Accordingly, as far as ground regarding non-compete fee is concerned, the Revenue's Ground No.5 for A.Y.2010-11, 11-12 and 2012-13 is dismissed'.

We find that Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2010-2011 has decided the issue against the Revenue. Therefore, in the absence of any distinguishable facts pointed out by the Revenue, we hold the findings of the Id. CIT(A) under challenge. The issue raised by the Revenue stands dismissed.

4.2. The last ground raised by the Revenue is with regard to assessee's failure to credit the employees contribution to Provident Fund of Rs.1,14,063/- and ESI of Rs.1,34,428/- account before the prescribed due dates. We noted that this issue is now stands covered by the decision of Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd., in Civil Appeal No.2833 of 2016, order dated 12.10.2022*, wherein the Hon'ble Supreme Court held that the amounts beyond the due dates under the Provident Fund Act and ESI Act is not to be allowed in term of provisions of section 36(1)(va) & 2(24)(x) of the Act. Hence, this issue being

covered in favour of Revenue, we upheld the addition and reverse the order of CIT(A) on this issue.

5. In the result, the appeal filed by the Revenue is partly-allowed.

Order pronounced in the open court on _____ day of November, 2024, at Chennai.

(मनोज कुमार अग्रवाल)

(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

(मनु कुमार गिरि)

(**MANU KUMAR GIRI**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

चेन्नई Chennai:

दिनांक Dated : -11-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

The Id. Assessing Officer noticed that assessee has entered into international transactions with its Associated Enterprises to the tune of Rs.130,83,55,074/-. Reference was made to Transfer Pricing Officer 1(1) Chennai to determine the Arm's Length price for the transactions. The TPO 1(1) vide order dated 18-10-2016 in F.No.A-119/TPO-1(1)/AY 2013- 14 held that an adjustment of Rs.4,56,37,066/- is required to be made to the international transaction of the assessee. Accordingly the Id. Assessing Officer made an addition of Rs. 4,56,37,066/-.