

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI BR BASKARAN (ACCOUNTANT MEMBER) AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 3976/MUM/2024
Assessment Year: 2018-19**

Saf Yeast Company Pvt. Ltd.,
419, Swastik Chambers, Chembur,
Mumbai-400071.

Dy. CIT-14(1)(2),
Aayakar Bhavan,
Mumbai-400020.
Vs.

PAN NO. AADCS 9080 J
Appellant

Respondent

Assessee by : Mr. Tanzil R. Padvekar, Adv. &
Mr. Gopal Sharma, CA
Revenue by : Mr. Bhangepatil Pushkaraj Ramesh,
Sr. DR

Date of Hearing : 30/09/2024
Date of pronouncement : 26/11/2024

ORDER

PER BR BASKARAN, AM

The assessee has filed this appeal challenging the order dated 13-06-2024 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2018-19. The assessee is aggrieved by the decision of Ld CIT(A) rendered on the following two issues:-

- (a) Disallowance of depreciation claimed on building used by key managerial personnel.
- (b) Capitalisation of administrative expenses in Work in Progress,

2. The assessee is engaged in the business of manufacturing of yeast used for baking purposes.



3. The first issue relates to the disallowance of depreciation claimed on building used by its key managerial personnel. The AO noticed that the assessee has claimed depreciation on a residential premises used by its key managerial personnel. He also noticed that the depreciation claimed on the above said building had been disallowed in the immediately preceding year. Following the same, the AO disallowed depreciation of Rs.4,23,840/- claimed by the assessee on the above said residential building. The Ld CIT(A) also confirmed the same.

4. We heard the parties on this issue. We notice that the Hon'ble Madras High Court has held in the case of CIT vs. Ashok Leyland Ltd (2019)(110 taxmann.com3)(Mad) that depreciation is allowable on the residential flats built by the assessee for accommodation of its employees. In the instant case, the AO himself observes that the residential building has been used by key managerial personnel. When an asset is used by the employees, then it should be taken as user for the purposes and cannot be taken as a user for personal purposes of the assessee. Accordingly, following the decision rendered by Hon'ble Madras High Court in the above said case, we hold that the assessee is entitled for depreciation on the residential building used by its key managerial personnel. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of depreciation claimed on the residential building used by key managerial personnel.

5. The next issue relates to the disallowance of proportionate administrative and employee cost by capitalising it to "Work in Progress". The AO allocated a sum of Rs.6,98,599/- out of administrative expenses and employee cost to "work in progress", which resulted in disallowance of above said amount. The Ld CIT(A) also confirmed the same.

6. We heard the parties and perused the record. The Ld A.R invited our attention of Income Computation and Disclosure Standard V relating to



tangible fixed assets, wherein the components of actual cost of tangible asset are stated. Paragraph 7 of the ICDS is relevant and it reads as under:-

“7. Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset. Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset.”

In the instant case, the AO himself has allocated proportionate cost of administration and general overheads, meaning thereby, they are not incurred specifically for the purpose of project or for acquisition of tangible fixed asset. Accordingly, we are of the view that the tax authorities are not justified in attributing proportionate general and administration expenses to work in progress. Identical view has been expressed by the co-ordinate bench in the case of DCIT vs. M/s Macrotech Developers Ltd (ITA No.2382/Mum/2022 dated 08-11-2023). Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this disallowance.

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

Order pronounced in the open Court on 26/11/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/11/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai