

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**(HYBRID HEARING)**

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष  
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

**&**

**SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.473/VIZ/2019**

**(निर्धारण वर्ष/ Assessment Year: 2012-13)**

Asst. Commissioner of Income Tax Circle – 3(1) Central Revenues Building M.G. Road, Vijayawada – 520002	v.	M/s. Mithra Kyokuto Special Purpose Vehicles Company Pvt Ltd., P.B. No. 443, Gudavalli Vari Street Governorpet, Vijayawada - 520002  [PAN: AAGCM8134Q]
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri MA Rahim, AR
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	05.12.2024
घोषणाकीतारीख/Date of Pronouncement	:	02.01.2025

**आदेश /O R D E R**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals), Vijayawada [hereinafter in short

“Ld.CIT(A)”] in Appeal No. 159/CIT(A)/VJA/15-16 dated 24.04.2019 for the A.Y. 2012-13.

2. Brief facts of the case are that, assessee is engaged in the manufacture and fabrication of tippers and concrete mixtures, filed its return of income admitting a loss of Rs. 3,12,52,199/- on 30.11.2012 and the return was summarily processed under section 143(1) of the Income Tax Act, 1961 (in short ‘Act’). Subsequently, the case was selected for scrutiny under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In view of change in the incumbent, fresh opportunity was accorded to the assessee on 07.10.2014 vide notice dated 08.09.2014. In response to the notices, assessee’s representative appeared and filed the information called for, from time to time. It was observed by the Ld. Assessing Officer [hereinafter in short “Ld. AO"], on perusal of the Profit & Loss Account that the Assessee has claimed a depreciation of Rs.18,98,740/- under the Companies Act and Rs. 2,66,81,164/- under the Income Tax Act. Ld. AO based on the verification of information furnished by the assessee found that there is nothing on record to show that the business has been actually commenced and the assets on which depreciation was claimed were really put to use for the purpose of business during the impugned assessment year. In view of this

Ld.AO disallowed the depreciation claimed by the assessee for Rs 2.66.81.164/- apart from disallowing 20% of expenditure amounting to Rs.4,73,467/-.

3. Aggrieved by the order of the Ld. CIT(A), assessee filed an appeal before Ld.CIT(A). Ld. CIT(A) considering the submissions made by the assessee's representative and by relying various judicial pronouncements allowed the appeal of the assessee.

4. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising the following grounds of appeal: -

*“1. The order of the Ld. CIT(A) is erroneous on facts and in circumstances of the case as narrated in the statement of facts.*

*2. The Id. CIT(A) erred in deleting the addition made by AO on account of depreciation of Rs.2,66,81,164/- as the assessee has neither used the plant & machinery nor was it ready for use.*

*3. The Id. CIT(A) erred in not considering the facts that the assessee has wrongfully claimed the depreciation by stating that the assessee company has made trail runs, which is not evident from the records.*

*4. Any other ground that may be urged at the time of appeal hearing.”*

5. The only issue emanating from the grounds raised by the revenue are with respect to the allowance of depreciation by the Ld. CIT(A) amounting to Rs.2,66,81,164/-. On this issue, Ld. Departmental Representative [hereinafter in short “Ld. DR”] submitted that the assets are not put to use since there are no evidences for the commencement of business by the assessee. Ld. DR

vehemently argued that just because incurring of inauguration expenses does not amount to commencement of business by the assessee or the machinery being put to use either actively or passively. She further submitted that the assessee has not shown any income regarding the sales putting the assets into use for the purpose of claiming depreciation for the impugned assessment year. Ld. DR referring to Para No. 28 of the Ld. CIT(A) order stated that Ld. CIT(A) has accepted that the production activity has not commenced but the assets were kept ready for use. However, Ld. CIT(A) has considered the passive use of assets which is falling within the scope of the expression “used for the purpose of business” under section 32 of the Act. She pleaded that the Ld. CIT(A) has erred in not considering the fact that machinery is not even installed and installation certificate was not produced by the assessee. She therefore prayed that the order of the Ld. CIT(A) be set-aside and order of the Ld. AO be restored.

**6.** Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] argued that Ld. CIT(A) has examined the fact that machinery was kept ready to use but could not commenced production activity for want of orders. He therefore pleaded that Ld. CIT(A) has rightly considered assessee as a passive user of the machinery. Ld.AR also referred to Note No. 26 of notes to financial statements annexed in paper book at Page No. 81 stating that the Company has incurred

pre-operative expenses which will be capitalised along with cost of fixed assets in the future years. Further he also referred to Annexure "E" of his written submissions wherein the details of capital work-in-progress includes raw materials purchased for production. He therefore pleaded that the asset was ready to use during the impugned assessment year and the Company has claimed the depreciation in accordance with the provisions of Act. He therefore, pleaded that order of the Ld. CIT(A) be upheld.

7. We have heard both the sides and perused the material available on record including the written submissions of both the parties. It is the contention of the Ld.AR that the assessee has set-up its business during the impugned assessment year and since the assessee did not receive any orders for the products to be manufactured, it did not commence production activity till the end of the previous year. It is noticed that Ld. CIT(A) has relied on the expenditure incurred by the assessee for inauguration of the business debited to the Profit & Loss Account and has concluded that machinery was kept ready for use. Ld.AR while vehemently arguing the case stated that the cost of raw materials used for the trial production is included in the capital work in progress. However, we notice that Purchase of raw materials are included in the capital work-in-progress but was not allocated to the various fixed assets, which clearly establishes the fact that machinery is not put to use during the impugned

assessment year. On a query, from the bench, Ld.AR was also unable to produce the installation certificate for the installation of the machinery during the impugned assessment year. Merely including the cost of raw materials in the capital work-in-progress without capitalisation of the machinery does not indicate that the machinery has been installed during the impugned assessment year. Further the fact that the assessee has incurred inauguration expenses also does not point out to setting up of business, in our considered view. In these circumstances, we could not consider the assessee as a passive user of assets and hence depreciation claimed by the assessee could not be allowed in the absence of any evidences being produced for the installation of the machinery during the impugned assessment year. We therefore inclined to allow the grounds raised by the revenue and thereby restore the order of the Ld. AO.

8. In the result, appeal of the revenue is allowed.

Order pronounced in the open court on 02<sup>nd</sup> January, 2025.

**Sd/-**  
**(के.नरसिम्हा चारी)**  
**(K. NARASIMHA CHARY)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

Dated: 02.01.2025  
*Giridhar, Sr.PS*

**Sd/-**  
**(एस बालाकृष्णन)**  
**(S. BALAKRISHNAN)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : M/s. Mithra Kyokuto Special Purpose Vehicles Company Pvt Ltd.,  
P.B. No. 443, Gudavalli Vari Street  
Governorpet, Vijayawada - 520002
2. राजस्व/ The Revenue : Asst. Commissioner of Income Tax  
Circle – 3(1)  
Central Revenues Building  
M.G. Road, Vijayawada – 520002
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam