

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

**SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

I.T.A. No. 1274/Kol/2025

Assessment Year 2014-15

Aman Tannery,
93,1D, Tiljala Road,
Kolkata - 700046
[PAN: AAKFA7826J]

..... **Appellant**
vs.

ITO Ward 29(1), Kolkata,
2, Gariahat Road (South),
Aayakar Bhawan Dakshin – 700068
West Bengal

..... **Respondent**

Appearances by:

Assessee represented by : Miraj D Shah, AR
Department represented by : Monalisha Pal Mukherjee, JCIT

Date of concluding the hearing : 30.10.2025
Date of pronouncing the order : 31.10.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) dated 30.05.2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”].

1.1 These are second round proceedings as the ITAT through their order dated 21.08.2018 [ITA No. 1057/Kol/2018] had earlier remanded the matter back to the Ld. AO with the following directions:

“4. I have heard the arguments of both the sides and perused the relevant material available on record. Ld. Counsel for the assessee has submitted that the claim of the assessee for depreciation on pollution control unit was disallowed by the AO on the basis of the Inspector's Report wherein the existence of the supplier of the said equipment at the given address was doubted. He has submitted that the assessee in order to establish the existence of the said supplier at the address, filed the

relevant documentary evidence in the form of trade license, professional registration certificate etc. but the AO brushed aside the same without making any comment or observation He has contended that even Ld. CIT(A) failed to appreciate the said evidence filed by the assessee to meet the objection raised by the AO about the very existence of the supplier at the given address and confirmed the disallowance made by the AO on account of depreciation on the ground that the documentary evidence in the form of sale bills, technical details, engineering installation report, photographs of the site, certificate from the Pollution Control Board etc. was not filed by the assessee to prove the genuineness of the purchase of pollution control equipment. He has contended that Ld. CIT(A) however, did not afford any opportunity to the assessee to file the said evidence during the course of appellate proceedings before him. He has contended that the said evidence is very much available with the assessee and urged that an opportunity may justifiably be given to the assessee to produce the same in support of his claim for depreciation by sending the matter back to the AO for verification. Although the Ld DR has raised an objection for giving one more opportunity to the assessee by submitting that AO and Ld.CIT(A) have already given the assessee a sufficient opportunity, I am inclined to accept the request made by Ld. Counsel for the assessee. It is observed that the relevant documentary evidence filed by the assessee to erase the doubt raised by the Inspector regarding the existence of the supplier at the given address was neither considered nor appreciated by the AO and the same was brushed aside without any discussion. Similarly, Ld.CIT(A) failed to appreciate the said evidence filed by the assessee to establish the existence of the supplier at the given address and proceeded to confirm the disallowance made by the AO on account of depreciation on the ground that the relevant documentary evidence to establish the genuineness of the purchase of pollution control equipment was not filed by the assessee. As rightly contended by Ld. Counsel for the assessee, no opportunity however, was given by Ld CIT(A) to the assessee to file such evidence and there is thus a clear violation of principle of natural justice by Ld.CIT(A). Since the said evidence is available with the assessee as submitted by the Ld. Counsel for the assessee, I am of the view that the assessee deserves an opportunity to support and substantiate his claim for depreciation by producing the same. I therefore, set aside the impugned order passed by Ld.CIT(A) and restore the matter to the file of the AO for deciding the issue relating to the assessee's claim for depreciation on pollution control equipment, after giving a proper and sufficient opportunity to the assessee to produce the relevant documentary evidence.”

1.2 Before the Ld. AO, the assessee presented considerable documents to justify the purchase of pollution control equipment worth Rs. 33,75,250. This transaction was doubted entirely in the first-round proceedings and the 100% depreciation claimed thereon had been denied on the ground that the existence of plant and machinery could not be allegedly established. The assessee supplied documents indicating the installation of said equipment; certificate issued by the Small Tanners Association confirming

the installation of the said equipment; and certain photographs of the said equipment having been actually installed. Apart from this all manner of documents were presented to show that the payments were actually made and the equipment was duly supplied for installation at the factory site. All these facts are recorded on page 2 of the Ld. AO's order. However, the Ld. AO deemed it fit to enquire further into the matter and therefore issued notice u/s 133(6) of the Act to the supplier of such equipment. The said notice was returned back unserved, leading the Ld. AO to take an adverse view once again by denying the claim of depreciation. Incidentally, even the Inspector deputed to enquire the whereabouts of the said concern also could not locate the said equipment supplier. Thereafter the original addition to the income was re-affirmed by the Ld. AO.

1.3 Aggrieved with this action, the assessee approached the CIT(A) where the matter was held against the assessee with the following brief findings:

“4.3 I have gone through the assessment order and record available. In my view, the physical non-existence of a company supplying physical equipment's necessarily prove that there is no actual business being conducted by that company. A second physical verification by the Income Tax Inspector, Mr. Satish Prasad Yadav, on 27/02/2019 proves that the claim of the appellant is only based on papers and is not genuine. The seller of equipment to appellant's business, in nature is a business which cannot entirely online without a physical office. A company may have a registered office address that is different from its operational premises, but absence of physical office cannot justify the claim of the appellant. The absence of third party who have engaged in business with the appellant is conclusive evidence that a company is not conducting actual business. It is necessary to demonstrate the existence and extent of business activities of third party.

1.4 Further aggrieved, the assessee has approached the ITAT with the following grounds:

“1) For that the Ld Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the disallowance of depreciation claim of Rs 33,75,350 on pollution control equipment solely on the ground that the supplier M/s Kasa Dwellings Pvt. Ltd. could not be traced at the given address, without properly appreciating the substantive evidence of genuine business transaction. Hence the same is bad in law and addition of Rs.33.75.350 should be deleted.

2) For that the Ld Commissioner of Income Tax (Appeals) violated principles of natural justice by not providing adequate opportunity to the appellant to explain the circumstances regarding the supplier's address and not calling for additional

evidence that could establish the supplier's existence and genuineness of transaction. Hence the appellate order passed is perverse, bad in law and the same be quashed.

3) For that the Hon'ble CIT(A) failed to properly implement the directions of the Hon'ble ITAT which had remanded the matter for fresh examination with proper opportunity to the assessee to produce necessary evidence, and instead mechanically confirmed the disallowance without due consideration of all evidence. Hence the appellate order passed is perverse, bad in law and the same be quashed

4) For that the addition of Rs.33,75,350 to the total income of the appellant is wholly unjustified, excessive, and contrary to law, as the same represents genuine business expenditure incurred for acquiring depreciable assets for business purposes. Hence the same is bad in law and addition of Rs 33,75,350 should be deleted.

5) For that the Hon'ble CIT(A) failed to consider and appreciate the documentary evidence submitted by the appellant establishing the genuineness of the transaction, including Certificates of installation of pollution control equipment, photographs of the installed equipment, trade license of the supplier, Professional tax registration details, Transaction confirmations and bank statements, VAT registration of the supplier, KYC documents of supplier's bank account.

6) For that the Hon'ble CIT(A) erred in law by treating the non-traceability of the supplier at a given address as conclusive proof that the business transaction was bogus, without considering that a company may have registered office address different from operational premises, Physical verification of only one address cannot negate the existence of a business entity and the supplier's legal existence was established through various registrations and documents

7) For that the Hon'ble CIT(A) erred in denying depreciation allowance u/s 32 of the Income Tax Act, 1961, when the asset (pollution control equipment) was actually acquired and installed, the asset was put to use in the business during the relevant assessment year, the expenditure was genuine and supported by documentary evidence and the asset qualified for depreciation as per the provisions of the Act. Hence the claim of depreciation should be allowed

8) For that the appellant reserves the right to file additional evidence under Rule 29 of the ITAT Rules, 1963.

9) For that the appellant seeks liberty to amend, alter, or withdraw any of the above grounds or raise additional grounds at the time of hearing.”

2. Before us, the Ld. AR stated that all manner of documentation which would be normally available with any business entity was produced before the Ld. AO but he has gone by the fact that the supplier was not existing on the given address. It was the submissions that after a long passage of more than 5 years it was possible that the supplier was not there at the given address but it cannot then be the assessee's responsibility in case

the said supplier has either moved on to some other address or has stopped doing business altogether. It was pointed out by the Ld. AR that the Ld. AO has not pointed out any defect in the documentation provided by the assessee to prove the existence of such plant and machinery. The Ld. AR relied on the case of M/s Diagnostic Vs. CIT, Kolkata, ITA No. 153/2004 dated 04.03.2011, and read out the relevant portion from the same as under:

“4. However, as regards the payments made to M/s. Selvas Photographics are concerned amounting to Rs. 3,12,302/-, we find that those have been made by account payee cheques and those have been encashed through the bankers of M/s. Selvas Photographics. It appears that according to the appellant, at the time of assessment, the appellant had no business transaction with M/s. Selvas Photographics and consequently, the said party did not co-operate with the Assessing Officer. However, the transaction having taken place through account payee cheques, we are unable to accept the contention of Mr. Agarwal, the learned advocate appearing for the Revenue that the transaction was a non-existent one. If an assessee took care to purchase materials for his business by way of account payee cheques from a third party and subsequently, three years after the purchase, the said third party does not appear before the Assessing Officer pursuant to the notice or even has stopped business, the claim of the assessee on that account cannot be discarded as non-existent. In the case before us, the Revenue has not put forward any other ground, such as, it was not a genuine transaction for other reasons but has simply rejected the claim on the ground as if there was no such transaction.

5. The transaction having taken place through payment by account payee cheques, such plea is not tenable and in such circumstances, the Tribunal below erred in law in reversing the finding arrived at by the Commissioner of Income-tax (Appeal) accepting the said transaction as a genuine transaction.”

2.1 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions and have gone through the documents before us, including the case law relied upon by the Ld. AR. We find that there is considerable strength in the argument advanced by the Ld. AR that the assessee has done everything possible in his powers to establish the genuineness of his claim regarding the installation and functioning of the impugned plant and machinery. The case law relied upon of M/s Diagnostics (supra) is squarely on that issue and since the facts are more or less identical, we have no hesitation in

holding that the assessee has managed to prove the factual aspects of the claim made by him and hence the action of Ld.AO cannot be supported. We accordingly direct that the assessee's claim should be allowed.

4. In this case, the Registry has pointed out that the appeal fee has been paid through a wrong challan. The Ld. AR must rectify the defect immediately on receipt of this order.

5. In result, appeal of the assessee is allowed.

Order pronounced on 31.10.2025

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Sanjay Awasthi)
Accountant Member

Dated: 31.10.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches