

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH : CHENNAI

**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं**

**श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।**

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.300/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-2011

The Tamilnadu Co-operative  
Textiles Proceeding Mills Ltd,  
No.428, Bhavani Main Road,  
Erode 638 004

**Vs.** The Income Tax Officer,  
Ward No.2(4)  
Erode

ITA No.345/Mds/2015  
Assessment year 2010-2011

The Income Tax Officer,  
Ward No.2(4)  
Erode

**Vs.** The Tamilnadu Co-operative  
Textiles Proceeding Mills Ltd,  
No.428, Bhavani Main Road,  
Erode 638 004

**(अपीलार्थी/Appellant)**

[PAN AAAAT 3147N ]

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri.G. Baskar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Radhakrishnan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing

: 05-08-2015

घोषणा की तारीख /Date of Pronouncement

: 12-08-2015

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

The assessee and the Revenue are in cross appeals against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, dated 07.11.2014 for the assessment year 2010-2011.

**2.** The first ground raised by the assessee is that the Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in denying 100% depreciation on the pollution control plant.

**3.** The facts of the case are that the assessee claimed 100% depreciation on "Reverse Osmosis System with Ultra filtration Module(RO Plant)" being water pollution control plant, whereas the Assessing Officer disallowed the claim and allowed only 15% depreciation eligible for plant and machinery as the ultra filters and membranes cannot be considered as bio-filters and further stated that the percentage of depreciation applicable to the above asset is 15% only and proceeded to allow the depreciation at ₹19,61,728/- on R.O Plant and the balance of ₹.1,21,76,849/- was disallowed. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

**4.** The Commissioner of Income Tax (Appeals) observed that the Assessing Officer in his order has considered the submissions made by the Id. Authorised Representative for assessee on account of the excess claim of depreciation on RO Plant and has elaborately discussed regarding the Reverse Osmosis System with 'reject treatment' for the existing Effluent Treatment Plant, by implying that

the RO-Plant was already existing in which the required parts have been replaced. The Assessing Officer after verifying the copy of bills has come to the conclusion that the membrane used is UF Membrane and as per Rule 5 of the Income Tax Act, 1961, the assets as mentioned in the bills mentioned by the assessee is not eligible for depreciation as per Appendix-I. As per Appendix-I, the assets of the assessee, RO Plant does not fall under any of the assets as mentioned in III(3)(ix) of Appendix-I as none of the machinery appearing in the list are eligible for 100% depreciation. The Assessing Officer also stated that the assessee has used UF Membranes and Filters which cannot be considered as bio-filters and which was not falling under III(3)(ix) of Appendix-I. After elaborate discussion, the Assessing Officer allowed the depreciation @ 15% on the RO Plant and the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. Against this, the assessee is in appeal before us.

**5.** We have heard both the sides and perused the material on record. As seen from the records RO plant does not fall under any of the assets as mentioned in III (3)(ix) of Appendix-I as none of the machinery appearing in the list are eligible for 100% depreciation. Being so, the Assessing Officer is justified in granting 15% depreciation on the above impugned plant and machinery. Accordingly, this ground of the assessee is rejected.

**6.** The next ground of the assessee is that the Commissioner of Income Tax (Appeals) ought to have directed the Assessing Officer to treat the income returned as loss of ₹1,59,07,968/- which was wrongly taken as ₹17,69,391/- at page No.19 of the assessment order.

**7.** According to the Id. Authorised Representative for assessee loss to be considered as ₹1,59,07,968/- as against loss considered by the Assessing Officer in its income returned at ₹17,69,391/- at page no.19 of the assessment order.

**8.** The Id. Departmental Representative submitted that neither the original return nor revised return showed the above loss. However, the assessee filed revised return on income, electronically on 06.12.2011 as seen from the assessment order and the assessee has accepted a total loss of ₹1,59,07,968/-. If the original and revised return were filed within time frame, the Assessing Officer is directed to consider the same in accordance with law. This issue is remitted back to the file of the Assessing Officer for fresh consideration. This issue is partly allowed for statistical purposes. The assessee appeal is partly allowed for statistical purposes.

**9.** Coming to the appeal of the Revenue in ITA No.345/Mds/2015, the grievance of the Revenue is that the Commissioner of Income Tax (Appeals) erred in allowing the appeal of the assessee on the issue of shortfall in contract receipts after verifying the details in respect of shortfall in contract receipts produced by the assessee during the appellate proceedings, and not giving an opportunity to the Assessing Officer to verify the same.

**10.** The facts of the case are that the Assessing Officer on a perusal of books of accounts and details as per 26AS had noticed that the assessee has filed to admit the entire contract receipts with respect to the Kerala State Handloom Weavers Co-operative Society Ltd and National Textile Corporation and found the short fall at ₹22,74,898/- and proposed to add the same as income of the assessee. The Assessing Officer issued a letter to the assessee to file the explanation for the same. The assessee in its reply stated as under :-

*“It is stated in the show cause notice that there is a shortfall in the contract receipts admitted in the books of account, in this regard, we have to state that, the society has raised invoices for the said societies(debtors) during the year and admitted the same in the books of account. However, the amount reflected in the form No.26AS are amount received during the year which is inclusive of opening balance of previous year. Without considering the fact that the assessee has accounted the contract receipts on accrual basis, and without considering the fact that the difference arises in form 26AS due to TDS deducted by the*

*contractor at the time of payment instead of crediting the invoices raised by the assessee, the Assessing Officer had added ₹22,74,898/- as income of the assessee which was totally incorrect. There was no suppression or concealment as alleged by the Assessing Officer. Moreover the accounts are audited by the Government Auditors and they had not made any such comments of suppression or concealment since they do a 100 percent through audit. The report of State Government agency can be accepted by the Income Tax Department."*

However, the Assessing Officer has not accepted the contention of the Id. Authorised Representative for assessee and made addition of ₹22,74,898/-. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

**11.** The Commissioner of Income Tax (Appeals) observed that the Assessing Officer has based his addition following the details as per 26AS. The Id. Authorised Representative for assessee filed the complete details of invoice raised by the assessee and the details of above receipts from M/s. Kerala State Handloom Development Corporation Ltd. The details filed by the assessee are examined and it was found that the assessee had accounted the contract receipts on accrual basis. Considering the fact that the difference arose in form 26AS due to TDS deducted by M/s. Kerala State Handloom Development Corporation Ltd at the time of payment, after verifying that there was no suppression or concealment as stated by the Assessing Officer. The accounts are also audited by the Government

Auditor and they had not made any comments regarding suppression or concealment. Therefore, the Commissioner of Income Tax (Appeals) deleted the addition made by the Assessing Officer. Against this, the Revenue is in appeal before us.

**12.** We have heard both the parties and perused the material on record. The contention of the Id. Authorised Representative for assessee is that the assessee had accounted all the relevant sales in its books of accounts for the assessment year under consideration and there was no finding by the Assessing Officer that sales relating to the assessment year under consideration was not properly accounted. However, we find that the assessee had not produced breakup of the sales, which are recorded in form no.26AS and has not reconciled the same with the sales recorded by the assessee in its books of account in the assessment year under consideration. In view of this, we are inclined to direct the assessee to furnish reconciliation between form 26AS and sales recorded by the assessee for the assessment year under consideration and pin point exact difference which are not relating to the assessment year under consideration in the form no.26AS so as to exclude from the sales in assessment year under consideration. With these observations, we are remitting back the issue to the file of the Assessing Officer for fresh consideration.

**13.** The Revenue's appeal in ITA No.345/Mds/2015 is partly allowed for statistical purposes.

**14.** In the result, the appeal of the assessee in ITA No.300/Mds/2015 and Revenue's appeal in ITA No.345/Mds/2015 are partly allowed for statistical purposes.

Order pronounced on Wednesday, 12<sup>th</sup> day of August, 2015, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:12.08.2015

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |