

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND**

**SHRI C.N. PRASAD, JUDICIAL MEMBER**

**आयकर अपील सं /I.TA No.3630/Mum/2013**

**(निर्धारण वर्ष / Assessment Year: 2009-10**

M/s. EOC Tailor Made Polymers India Pvt. Ltd., The Paragon, 1 <sup>st</sup> Floor, Dhanraj Mills Compound, Sitaram Jadhav Marg, Lower Parel (W), Mumbai-400 013	<b>बनाम/</b> Vs.	The DCIT, Circle-3(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AAACR 3508D		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी ओर से/ <b>Appellant by:</b>		Shri Bhavesh Shah
प्रत्यर्थी की ओर से/ <b>Respondent by:</b>		Shri Kailash Gaikwad

**सुनवाई की तारीख / Date of Hearing :11.07.2016**

**घोषणा की तारीख /Date of Pronouncement :23 .09.2016**

**आदेश / O R D E R**

**PER C.N. PRASAD, JM:**

This appeal is filed by the assessee against the order of the Ld. CIT(A)-6, Mumbai dated 18.03.2013 pertaining to assessment year 2009-10.

2. The only grievance of the assessee in its appeal is that the Ld. CIT(A) erred in confirming the disallowance of depreciation on building.

3. Briefly stated facts are that assessee is a Private Limited company filed its return of income on 12.9.2009 declaring income of Rs.67,16,610/-. The assessment was completed u/s. 143(3) on 25.11.2011 determining the income of the assessee at Rs. 82,54,090/-. While completing the assessment, the Assessing Officer disallowed depreciation on building observing that the document has not been registered in the name of the company till the date of passing of the assessment order and no evidence whatsoever has been produced by the assessee to show that the company actually owns the property. He further observed that the property was under dispute and the property was infact in the name of one Mr. Rajendra V. Patel and not in the name of assessee company. The assessee contended before the Assessing Officer that the property was acquired by the company through auction bid from the Office of the Custodian, appointed under the Special Court (Torts) Act, 1992 as the said property was put to public auction in the news paper dated 16.7.2005. It was contended by the assessee that the company has authorized Mr. Rajendra V. Patel, Managing Director of the company to take part in the auction offer on behalf of the company as per the resolution passed by the Board of Directors therefore it was contended that the company has acquired the property through its authorized director and obtained the possession and started using of the said property, the claim of depreciation be allowed as claimed in the return. However the Assessing Officer did not appreciate the submissions of the assessee and disallowed the depreciation.

4. On appeal, the Ld. CIT(A) sustained the disallowance by affirming the order of the Assessing Officer.

5. The Ld. Counsel for the assessee at the outset submits that additional evidences in the form of conveyance deed is furnished alongwith the petition for admission of additional evidence therefore he submits that the additional evidence may be admitted. He further submits that the assessee could not furnish the conveyance deed before the Ld. AO up to the passing of assessment order as the execution of conveyance deed was pending. During the course of hearing before CIT (A) on 18.02.2013, it was requested that the draft conveyance deed was sent for adjudication for stamp duty purpose and requested to give adjournment for 15 days, but the same was not allowed and CIT (A) passed the order. He submits that the conveyance deed is registered on 22.03.2013 wherein it has been mentioned in para D that physical possession of the said property was given to appellant on 18.09.2008. The addition made and confirmed on one of the grounds that there is no conveyance deed on record and there was a genuine reason as the conveyance deed was not executed and hence it could not be produced before the AO and CIT (A).

5.1. The Ld. Counsel for the assessee further submits that marketing office of the assessee which was taken on lease and situated in Andheri was shifted to new premises. He submits that assessee has paid rent upto November. He submits that the marketing office has been shifted to new building and the new building was put to use. The Ld. Counsel for the assessee further referring to page 71 to 86 of the paper book submits that the assessee has incurred various office expenses in the new premises

which is evidenced from the ledger account furnished. Therefore, he submits that the depreciation claimed by the assessee be allowed.

6. The Ld. Departmental Representative submits that none of the expenses said to have been incurred for the new office will prove that the office was used for business. He further submits that it is not known how the office was shifted and when it was shifted and not shown any shifting related expenses. He further submits that the conveyance deed is now produced before the Bench is not produced before the Assessing Officer or the Ld. CIT(A). Therefore, he submits that the whole issue has to be re-examined by the Assessing Officer and it may be remitted to the file of the Assessing Officer.

7. We have heard the rival submissions, perused the orders of the authorities below and the evidences produced before us. Admittedly, the conveyance deed which is in the name of the assessee company executed on 22.3.2013 is not before the authorities below when the assessment was completed. Since the document furnished by the assessee by way of additional evidence will certainly go to the root of the matter, it is required to be admitted as additional evidence. Thus, we admit the additional evidence furnished by the assessee. At the same time, as this evidence is not before the Assessing Officer and on hearing both parties, we are of the considered view that the whole issue has to be re-examined by the Assessing Officer afresh in accordance with law. Thus, we set aside the issue to the file of the Assessing Officer with a direction to examine afresh in accordance

with law after providing adequate opportunity of being heard to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23<sup>rd</sup> September, 2016.

Sd/-

Sd/-

**(RAJENDRA)**

**(C.N. PRASAD )**

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 23<sup>rd</sup> September, 2016

व.नि.स./ Rj , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार**

(Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**