

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.1187(B)/2015
(Assessment year : 2007-08)**

M/s SDI Mineral Export Co.
CTS No.203/8B-2, Yalamalli Compound,
Pala Badami Road,
Gadag.

PAN No.ABFFS7436Q

Appellant

Vs

The Income-tax Officer,
Ward-1,
Gadag

Respondent

**Assessee by : Smt Sheetal, Advocate
Revenue by : Dr.P.K.Srihari, Addl.CIT**

**Date of hearing : 25-02-2016
Date of pronouncement : 04-03-2016**

O R D E R

PER SHRI VIJAY PAL RAO, JM:

This appeal of the assessee is directed against the order dated 12-06-2015 of the CIT(A), Hubli for Assessment year : 2007-08.

2. The assessee has raised the following grounds;

“1. On the facts and circumstances of the case, the order of the CIT(A) is opposed to law and to the principles of natural justice in that the order passed was not a speaking order and the order is without considering the submissions

of the assessee and consequently, the order is liable to be set aside.

2. The CIT(A) having afforded an opportunity of hearing on 11.02.2015, ought to have passed the order immediately thereafter whereas the order was passed on 12.06.2015 i.e after a long gap which probably made him to omit to consider the various submissions of the assessee and consequently the order of the CIT(A) upholding the disallowance as made by the AO was opposed to law and liable to be set aside.

3. On the facts, the ld.CIT(A) ought to have allowed the additional depreciation as claimed by the assessee under sec.32(iia) of the Act, to the extent of Rs.32,43,991/- on the machinery put to use for production of iron ore.

4. The ld.CIT(A) erred in relying on the observations of the assessing officer that the assessee was only carrying on job work of cleaning and washing iron ore whereas the actual activity of the assessee being excavating and processing of ore.

5. The ld.CIT(A) in the order also finally having observed that the assessee has not only done job work of cleaning and washing of iron ore but also involved in the production, ought to have allowed the claim of the assessee towards additional depreciation in full.

6. The ld.CIT(A) ought to have considered the judicial precedence of the Hon'ble Supreme Court in the case of CIT Vs Sesa Goa Ltd.(2004) 271 ITR 331(SC) and also several other cases and ought to have held that the assessee was

entitled to additional depreciation under sec.32(iia) of the Act.

7. Without prejudice, the learned CIT(A) erred in confirming the addition as made by the Assessing Officer.

8. For these and such other grounds that may be urged at the time of hearing, the assessee prays that the appeal may be allowed”.

3. The assessee is a firm engaged in the business of feeding, screening, dozing & loading of iron ore. The assessee has acquired the machinery for its activity and claimed additional depreciation in the revised return of income. The AO did not allow the additional depreciation u/s 32(1)(iia) of the IT Act, on the ground that the assessee is not engaged in the manufacturing or production activity. The assessee challenged the action of the AO before the CIT(A), but could not succeed. The CIT(A) has held that no production work was carried out by the assessee firm, as the assessee was doing only job work of feeding, screening, dozing and loading work of iron ore.

4. Before us, learned AR of the assessee has submitted that the assessee is doing the excavation of iron ore, screening, cleaning, dozing and loading and therefore, this activity of the assessee clearly falls under the term ‘manufacturing’. The learned AR has referred to the bills raised by the assessee and submitted that the assessee has earned income

through carrying out the activity of screening, cleaning, dozing and loading. Therefore, this activity of the assessee amounts to manufacture of iron ore and consequently, eligible for additional depreciation u/s 32(iia) of the IT Act, 1961. In support of her contention, she had relied upon the decision dated 20-09-2013 of the Co-ordinate Bench of this Tribunal in the case of Sri R. Prabhu in ITA No.758/Bang/2012 and submitted that an identical issue had been considered and decided by this Tribunal in favour of the assessee.

5. On the other hand, learned DR has submitted the assessee is doing only a job work and therefore, the end product does not belong to the assessee. Thus, the learned DR submitted that the activities carried out by the assessee does not fall under the expression "*manufacture or production*", when the assessee does not own the product. He relied on the orders of the authorities below.

6. We have considered the rival submission as well as perused the material on record. The limited question arises for our consideration and adjudication is whether the activity of the assessee of feeding, screening, dozing and loading amounts to manufacture or production activity in terms of sec.32(1)(ia) of the Act. The authorities below denied the claim of the assessee on the ground that the assessee is doing only a job work of feeding, screening, dozing and loading of iron ore which does not fall under the term "*manufacture or production*". It is pertinent to note that

as per the bills raised by the assessee, the income was earned from the activity of feeding, screening, dozing and loading and as per the quantity of production. Therefore, the activity of the assessee is not merely washing and cleaning of iron ore already excavated by some other party, but the work of feeding, screening, dozing and loading is done by assessee itself. Therefore, we do not agree with the finding of the authorities below that it is only a cleaning process carried out by the assessee. An identical issue was considered and decided by the Co-ordinate Bench of the Tribunal in case of ACIT Vs Sri R.Prabhu (Supra) in para-7 as under;

“7. Having heard both the parties and having considered their rival contentions, we find that clause-(2a) of sub-sec.1 of sec.32, provides that an assessee is eligible for additional depreciation if it has acquired any new plant or machinery and installed the same after 31st day of March 2005 and is engaged in the business of manufacture or production of any article or thing. The assessee herein is claiming to be in the business of mining i.e production of the iron ore. As seen from the work orders placed and agreements between the assessee and owner/lessees of the mines, the assessee has been engaged to carry out excavation, material shifting, crushing and screening of iron ore and the rates fixed for each of such work is also different. To apply the provisions of sec.32(1)(iia) of the Act, it is necessary that the assessee has to carry on the work of manufacture or production of an article or thing and work of excavation, processing and transportation carried on by the assessee is evident from the agreements with each of the

contractors that he has entered into and it would be sufficient and would satisfy the condition u/s 32(1)(iia) of the IT Act, if the assessee has purchased the machinery and has installed and used the same during the relevant financial year. As seen from the bills raised by the assessee, the assessee has charged the lessees on tonnage basis for iron ore production, waste production and rock breaker tonnage as is evident from bill no.3 dated 9/3/2008 raised by the assessee of B.M.M.P.L, which is placed at page 12 of the paper book. Therefore, we are satisfied that the assessee was not just giving his vehicle on hire for carrying out the work of mining but he is in fact engaged in the mining business and is eligible for claiming additional depreciation u/s 32(1)(iia) of the IT Act. Thus, assessee's appeal is allowed".

In view of the facts and circumstances the case, as well as by following the decision of the Co-ordinate Bench of this Tribunal (Supra), we decide the issue in favour of the assessee and direct the AO to allow the claim of additional depreciation u/s 32(1)(iia) of the IT Act, 1961.

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

Order pronounced in the open Court on the 4th March, 2016.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER
Dated : 04-03-2016
Place: Bangalore
am*

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

AR, ITAT, Bangalore