

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 2025/Del/2012
AY: 2001-02**

ACIT, Circle 9(1)
Room no.163
C.R.bldg., New Delhi

vs. M/s Hallmark India P.Ltd.
(Now known as Sparrowhawk Inter-
national Channels P.Ltd.)
602, Antriksh bhawan, KG Marg
New Delhi

PAN: AAACH 6943 E

(Appellant)

(Respondent)

Appellant by : Sh. AK Saroha, CIT, D.R.

Respondent by : Sh. Sunil Bakshi, C.A.

ORDER

PER J.SUDHAKAR REDDY, A.M.

This is an appeal filed by the Revenue directed against the order of Ld.CIT(A)-X, New Delhi dated 7.2.2012 pertaining to the Assessment Year (A.Y.) 2001-02.

2. The assessee in this case has originally filed his return of income on 31.1.2001. The assessment was completed u/s 143(3) of the Income Tax Act 1961 (the Act) on 31.12.2003. Thereafter a notice u/s 154 of the Act has been issued to the assessee on 3.2.2006. On considering a reply, the Assessing Officer (AO) has passed an order u/s 154 of the Act on 31.3.2006 reducing the declared loss by Rs.60 lakhs on the ground that the assessee has claimed excess depreciation.

2.1. The assessee carried the matter in appeal. The Ld.CIT(A) vide his order dt. 19.9.2006 allowed the assessee's appeal on merits.

2.2. Thereafter on 28.3.2008, the A.O. issued a notice u/s 148 of the Act to the assessee on the same issue. He once again disallowed the said amount of Rs.60 lakhs by an order passed u/s 143(3) r.w.s.147 of the Act. On appeal the Ld.CIT(A), in the impugned order held that the reopening is bad in law by applying the decision of the Hon'ble Madras High Court in the case of Palani Swami vs. CIT 106 ITR 811 (Madras).

3. Aggrieved the Revenue is in appeal before us on the following grounds.

“1. The Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs.60 lakh made by the AO on account of excess claim of depreciation made by the assessee on the assets not put to use for the purpose of business during the relevant assessment year.

2. The Ld.CIT(A) erred in law and on facts of the case in relying on his order dated 19/09/2006 because the said order was set-aside by the ITAT. Also because the assessee failed to prove that amount of Rs.60 lakh was not claimed by it while computing total income.

3. The appellant craves to amend, modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”

4. After hearing rival contentions, we find that in the grounds of appeal the Revenue has not challenged the finding of the First Appellate Authority that the reopening is bad in law. The Ld.Sr.D.R. relies on the decision of this Bench of the Tribunal in ITA 4149/Del/06 vide order dt. 26.9.2008, where the Tribunal had restored the issue to the file of Assessing Officer. We find no merit in this argument, for the reason that, there is no fresh material or information with the A.O. warranting the reopening of the assessment. When the very same issue on which reopening was made was subject matter of appeal both before the Ld.CIT(A), as well as the ITAT, it is

clear the reasons recorded are not based on any fresh material Thus we dismiss this appeal of the Revenue by upholding the order of the Ld.CIT(A).

5. In the result, Revenue's appeal is dismissed.

Order pronounced in the Open Court on 17th March, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 17th March, 2016

**manga*

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar