

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.19 & 1835/Mds/2012  
निर्धारण वर्ष /Assessment Years: 2004-05 & 2003-04

The Asst. Commissioner of Income  
Tax, Company Circle-IV(1),  
Income Tax Building,  
Race Course Road,  
Coimbatore-641 018.

**Vs.** M/s.Craftman Automation  
Pvt.Ltd., 15, LML Colony,  
Pappanaickenpalayam,  
Coimbatore-641 037.

**[PAN: AABCC 2461 K]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.Supriyopal, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.Sreedhar, Adv.

सुनवाई की तारीख/Date of Hearing

: 09.03.2017

घोषणा की तारीख /Date of Pronouncement

: 12.05.2017

**आदेश / ORDER**

**PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:**

These appeals are filed by the Revenue against the Orders dated 28.10.2011 of Commissioner of Income Tax (Appeals)-I, Coimbatore, in Appeal No.179/09-10 for the AY 2004-05 and Order dated 31.07.2012 in Appeal No.43/11-12 for the AY 2003-04 and raised the following grounds:

*The order of the learned Commissioner of Income-Tax (Appeals) is against facts and circumstances of the case.*

- 1. The learned CIT(A) erred in deleting the addition made on account of additional depreciation u/s.32(1)(ia).*
- 2. The learned CIT(A) failed to consider while allowing the assessee's claim that no solid backing has been provided to substantiate its claim for additional depreciation.*
- 3. The learned CIT(A) ought to have considered that no Certificate under Rule 5A in form 3AA signed by either a Chartered Accountant or any person entitled to be appointed to act as an Auditor as per provision of Sec.226, subsection (2) of Companies Act, 1956 has been filed.*
- 4. The learned CIT(A) ought to have considered that the production capacity in any manufacturing industry consists of three ingredients namely (1) license capacity, (ii) installed capacity and (iii) utilized capacity.*
- 5. The learned CIT(A) ought to have considered that the above subject matter had not been vouched for by the Appellant /Chartered Engineer.*
- 6. For these and other grounds that may be adduced at the time of hearing, the order of the CIT(Appeals) may be canceled and that of the Assessing Officer restored.*

## **2.0 Delay:**

There was delay of three days in filing the appeal for the AY 2003-04 and the AO has filed condonation petition. The Ld AR did not make any objection for condonation. We have perused the condonation petition and both sides and condone the delay.

**3.0** The issues involved in the Assessment Years 2003-04 & 2004-05 are common. Therefore, both the appeals are clubbed and heard together and disposed off in a common order for the sake of convenience as under:

**4.0** The assessee has claimed the additional depreciation for the AYs 2003-04 & 2004-05. The AO disallowed the depreciation observing that there was no increase in the installed capacity during the previous year to the extent of 25% as required u/s.32(i)(ia) to allow the additional depreciation. According to the AO from the Annual Report, the installed

capacity was 1800 tonnes as against the licenced capacity of 2250 tonnes. The assessee did not produce any evidence to show that the installed capacity was increased by 25% during the year under consideration to be entitled for additional depreciation and hence the AO disallowed the depreciation. This issue was travelled up to the ITAT and the Hon'ble ITAT 'A' Bench, Chennai, in ITA No.789/Mds/2007 for the AY 2003-04 dated 18.12.2009, has remitted the matter back to the file of the AO as under:

15. *We have perused the orders and heard the rival contention. Assessing Officer has went by form 3AA filed by the assessee in support of its claim u/s.32(1)(iia) of the Act. No doubt, annexure to such report mentions that installed capacity of 31<sup>st</sup> day of March, 02 as 1800 tonnes. Similarly, the annual report of the assessee for the financial year 2002-03, in its page-22, mentions the installed capacity as on 31.3.03 as 1800 tonnes. Assessing Officer therefore came to a conclusion that there was no increase in the installed capacity during the relevant previous year. Howsoever it remains an undeniable fact that there was substantial increase in the value of machinery exceeding 50% in the relevant previous year, and substantial increase in power consumption, man power and raw material consumption. No doubt, power consumption, raw material consumption, man power increase would all only show actual utilization as mentioned by the CIT(A). But increase in plant and machinery of more than 50% in the relevant previous year would in all probability lead to increase in the installed capacity. Whatsoever it may be, it would be naive to presume that installed capacity remained at 1800 tomes despite such increase in machinery during the relevant previous year. It ,therefore, prima facie appears that in the Annexure to his report in form 3AA, the chartered accountant might have mentioned installed capacity as on 31.3.02, as 1800 tonnes by mistake. As noted by us about, there could not have been a situation of no increase in the installed capacity despite substantial income on the plant and machines , nevertheless it was duty of the assessee to prove that such increase exceeded 25%, as laid down in proviso (B) to clause-2 of sub section (1) of section 32, as it applied for relevant previous year. Assessing Officer never put to the assessee any question as to why the installed capacity remained stagnant despite substantial increase in its plant and machinery. No doubt, before the CIT(A) assessee had made a sincere endeavour to show that there was substantial increase in installed capacity, but nevertheless could not quantitatively show how it exceeded 25%. Be that as it may, we have to take into consideration peculiarities of the business of an assessee before applying the provisions of the Act, which are beneficial to the assessee. Assessee in this case is manufacturing machinery which undoubtedly were unique to each of its customers being custom built. Non homogenous product and non repetitive nature would make measurement of the installed capacity a subjective affair. Of course, assessee could have produced the chartered engineers report which it has sought admission now, as an additional evidence at the time of proceedings before the CIT(A). However, in our opinion it ought not have been denied the claim of additional depreciation available, when otherwise it was eligible for it, just for its inability to produce conclusive evidence regarding the quantum increase in installed capacity. If it is able to produce some evidence to prove an increased capacity in excess of 25%, in our opinion, its claim has to be considered. Assessee is only seeking one more opportunity to prove that the increase in installed capacity exceeded 25% and we do not find any prejudice to be caused to the revenue if such opportunity granted. Therefore, in the interest of the justice, we set aside the orders of the authorities below and remit the matter back to the Assessing Officer for consideration afresh. Assessee shall be given an opportunity for producing whatever evidence in support of its claim and the Assessing Officer shall proceed in accordance with law in a pragmatic manner taking into account the peculiarities of assessee's business.*

In the second round, the assessee submitted a Chartered Engineers Report to support the increase in installed capacity which was not admitted by the AO stating that it was a postmortem report cannot be taken as concrete and additional evidence. The AO relied on the Annual Report where there was no change in the installed capacity and licensed capacity and compared the same with the earlier years statistics and disallowed the depreciation in the second round also.

**4.1** Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted addition. For the sake of convenience, we extract the relevant paragraphs of the Ld.CIT(A) order:

*5.2 I have gone through the submissions made by the appellant and the Remand Report of the Assessing Officer. An elaborate discussion was made in my order in Appeal No.179/09-10 regarding the working of Material Removal Ratio. The Material Removal Ratio is calculated –*

- *For milling, turning operation in machining centres to determine the capacity of machines.*
- *Milling operations are operations in which the cutting tools rotates to bring cutting edges to bear against the work piece to remove material.*
- *Cast iron is the material considered for calculation of M.R.R. The M.R.R. is depending on horse power of the machine and spindle RPM.*
- *The horse power of the machine is defined in kilowatt. The technical team of the appellant company worked out the MRR for horizontal machine centres and also MRR for vertical machine centres.*

*5.3 The technical team of the appellant company worked out the Material Removal Ratio for horizontal machine centres and also Material Removal Ratio for vertical machine centres in terms of of  $\text{cm}^3$  /minute. On working out the capacity increase in horizontal machining centre based on M.R.R. and additional tools, the capacity increase was 29.2% over the capacity as on 31.3.2002. Similarly, the Material Removal Ratio on other machineries like turning centre, milling machine, Zig boring machine, the percentage of capacity increase was 73.2%. The total capacity increase over the capacity as on 31.3.2002 was worked out at 53.8%. While working out the Material Removal Ratio, the installed date of machinery, the Horse power of the machinery, number of machines and cast iron material removal ( $\text{cm}^3$  /minute), the total working hours in a day based on the shifts was considered. The base line for material removal was taken at  $400 \text{ cm}^3$  /minute. The appellant filed a detailed analysis which was also verified on my personal visit to the fact with reference to the new machinery installed and also the other units of measurement discussed above.*

*5.4 The appellant in this case is manufacturing machinery which undoubtedly were unique to each of its customer being custom built, non-homogenous product and non-repetitive in nature which makes the measurement of the installed capacity a subjective affair. Taking into consideration, the observations of the Hon'ble ITAT for the assessment year 2003-04,*

*the evidence produced in the form of Material Removal Ratio based on Horse power, hours of working, horizontal machine centre, vertical machine centre, turning, milling, etc., the increase in capacity as percentage with respect of 31.3.2002 is above 25% and hence the Assessing Officer is directed to allow additional depreciation. These grounds of appeal are allowed.*

**4.2** Aggrieved by the Order of the Ld.CIT(A), the Department is on appeal before us.

During the appeal hearing, the Ld.DR argued that the assessee has not produced any evidence to show that there was increase in capacity installed to the extent of 25% to be eligible for additional depreciation. In the assessee's case, the installed capacity and the licensed capacity was one and the same in the earlier and the Assessment Year under consideration. The annual report did not show any increase in the increase of the capacity. The Chartered Engineers Certificate cannot be relied upon since the machinery was installed in 2003 and the Certificate was issued in 2009 which was a postmortem and the Chartered Engineers certificate cannot give a concrete opinion on increase of the capacity after the gap of 7 years. Therefore, the Ld.DR contended that the Ld.CIT(A) made an error by deleting the addition and no interference of ITAT is called for. On the other hand, the Ld.AR argued that the assessee has purchased new machinery and installed in the factory which has increased the production more than 25%. The assessee is engaged in the production of manufacturing of heavy engineering products like gear, gear boxes, machinery parts, automobile components, textile machinery parts, air compressor parts, aluminum and locomotive parts. The company is in the various designs composition of various specifications and it is involved

in lathe work. Since the company is manufacturing and involved any number of items which will be difficult to count to increase any capacity in numbers by introduction of new plant and machinery. The increase in plant and machinery was more than 50% and there was a substantial increase in power consumption production and other components and the assessee also produced Chartered Engineers Certificate as additional evidence which was admitted by the Hon'ble ITAT and remitted the matter back to the file of the AO but unfortunately the AO neither considered the increase in various items of expenses and production for increase in capacity nor considered the Chartered Engineers Certificates. The Ld.CIT(A) has rightly considered the issue and allowed the appeal and no interference is called for.

**5.0** We heard the rival submissions and perused the material placed on record.

The assessee has claimed the additional Depreciation u/s 32(1)(iia). The assessing officer disallowed the additional Depreciation and the matter travelled up to ITAT and the ITAT remitted the matter back to the file of AO to consider any additional evidence to support the increase in capacity to the extent of 25% to consider the assessee's claim. The assessee has submitted the additional evidence in the form of Chartered Engineers Certificate. The AO brushed aside the Certificate issued by Chartered Engineer without verifying the facts of the case. If the AO is having some reservations regarding the capacity installation and for

admission of the Chartered Engineers Certificate as an evidence, he should have examined the Chartered Engineer Certificate regarding the increase in capacity as per the provisions of the Income Tax Act before brushing aside the Chartered Engineers Certificate. The other alternative available for the AO is to make a personal visit along with Chartered Engineer and examine the correctness of increase in the installed capacity or refer the matter to DVO. Instead, the AO simply relied on the annual accounts in spite of the fact that the assessee has explained that the assessee it is engaged in manufacturing, the machinery which is unique to each customers custom built non-homogenous product and non-repetitive in nature which makes the measure of installed capacity as a subjective affair. The Ld.CIT(A) made the personal visit to the factory and had discussed with reference to the measurement of the installed capacity on the basis of material removal ratio and given a finding that increase in capacity as percentage w.r.t. the earlier year is above 25%. For a query from the bench, the Ld.DR replied that the there was an increase in production more than 25% after installation of the plant and machinery and there were substantial increase in power consumption and other related items of productions. Considering totality of the facts that the Ld.CIT(A) has given clear analysis of measurement and made personal visit and given a finding that the increase in capacity as percentage is more than 25%. Therefore we do not find any reason to interfere with the Ld.CIT(A) and uphold the same and dismiss the Revenue appeal.

**6.0** In the result, the appeals of the Revenue for the AYs 2003-04 & 2004-05 are dismissed.

Order pronounced in the Open Court on 12<sup>th</sup> May, 2017, at Chennai.

Sd/-  
(एन.आर.एस. गणेशन)  
**(N.R.S. GANESAN)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S.SUNDER SINGH)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12<sup>th</sup> May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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