

आयकर अपीलीय अधिकरण, "जी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1797/MUM/2011
(निर्धारण वर्ष / Assessment Year: 2007-08)

Nanavati Chemex Private Ltd. Nanavati Mahalaya, 18, Homi Mody Street, Mumbai - 400023	बनाम/ Vs.	Income Tax Officer 2(2)(3), Aayakar Bhavan, M.K.Marg, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK5171D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Pankaj Jain
Department by:	Shri S. Senthil Kumaran

सुनवाई की तारीख / Date of Hearing: 28.03.2016
घोषणा की तारीख /Date of Pronouncement: 17.06.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal filed by the assessee against the order dated 02.12.2010 passed by the Commissioner of Income Tax (Appeal) 5, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2007-08.

2. The brief facts of the case are that the assessee filed the return of income declaring total loss to the tune of Rs.1,15,020/- on 31.10.2007. The return of was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”) on 24.10.2008. The case was selected for scrutiny by issuance of notice u/s.143(2) of the Act dated 18.08.2008 which was served upon assessee. Notices u/s.143(2) and 142(1) of the Act were also issued and served upon the assessee. The assessee claimed depreciation of Rs.2,99,148/- on the plant and machinery and factory shed. However, on perusal of the assessee’s Profit and Loss Account, it was observed that the only credit was on account of commission of Rs.2,04,615/-. There was no other credit to the Profit & Loss Account to show the assessee’s involvement in manufacturing activity. The Assessing Officer was of the view that the Plant & Machinery and factory shed were for manufacturing purpose. Therefore, the claim of the assessee for depreciation to the tune of Rs.2,99,148/- was disallowed, thereafter in appeal the CIT(A) confirmed the said disallowance. Feeling aggrieved the assessee filed the present appeal before us.

3. We have heard the arguments advanced by the learned representative of the parties and have gone through the record carefully. The sole point which has been raised by the assessee is in connection with the confirmation of disallowance by the CIT(A) with regard to his claim on depreciation of Rs.2,99,148/-. The learned

representative of the assessee has argued that since the relative asset has entered the block therefore the claim of the depreciation is required to be allowed in the interest of justice. In support of this contention of the learned representative of the assessee has placed reliance on the law settled in Commissioner of Income Tax -7 Vs. M/s. Sonic Biochem Extractions Pvt. Ltd. decided by the Bombay High Court on 17.11.2015 and [2005] 142 taxman 316 Hon'ble High Court of Kerala in case of Commissioner of Income Tax Vs. Travancore Chemicals & Mfg. Co. Ltd. The facts of the case relied by the representative of the assessee is quite different from the present case. The law relied by the assessee speaks about the running of business where one particular machinery was not used in the relevant assessment year. Whereas in the instant case the business of the assessee is not running from the relevant assessment year and plant and machinery were not put to use for business purpose. Here it is necessary to advert the finding of the assessment order on record:-

- “3. The assessee has claimed depreciation of Rs.2,99,148/- on the Plant & Machinery and Factory Shed. However, on perusal of the assessee's P & L Account, it is seen that the only credit is on account of commission of Rs.2,04,615/-. There is no other credit to the P & L Account to show the assessee's involvement in manufacturing activity. Therefore, it is obvious that the

Plant & Machinery and factory shed have not been put to use for manufacturing purpose. Therefore, for want of fulfillment of basic condition of use of asset being Plant & Machinery and factory shed, for the purpose of business, assessee's claim for depreciation of Rs.2,99,148/- stands disallowed. Even the assessee's representative has concurred with this inference.”

3.1 No doubt the said finding was affirmed by the CIT(A) on the same ground that in the assessee's case the entire block of asset was not put to use during the year. Accordingly it is not the question of individual asset being used or not.

4. The finding given by the CIT(A) is quite justifiable and in accordance with law. No distinguishable facts have been produced before us to contradict the finding of the CIT(A). At the time of cost of repetition it is clarified that the law relied by the learned representative of the assessee nowhere identical to the facts of the present case, therefore, the finding no ground to interfere with at this appellate stage.

5. Accordingly the appeal filed by the **assessee is hereby dismissed.**

Order pronounced in the open court on 17th June, 2016.

Sd/-

(B.R.BASKARAN)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 17th June, 2016

MP

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