IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.1286/Bang/2014
Assessment year : 2011-12

The Deputy Commissioner of Income Tax, Circle 11(4), Bangalore.	Vs.	M/s. Indian Brewery & Distillery Pvt. Ltd., No.24, 1st Floor, Rest House Crescent, Bangalore – 560 001. **PAN : AABCI 0341L**
APPELLANT		RESPONDENT

Appellant by	:	Dr. Shankar Prasad, K., Jt. CIT(DR)
Respondent by	:	Shri V. Srinivasan, CA

Date of hearing	:	07.07.2015
Date of Pronouncement	:	30.07.2015

O R D E R

Per N.V. Vasudevan, Judicial Member

This appeal by the Revenue is against the order dated 30.6.2014 of the CIT(Appeals)-I, Bangalore relating to assessment year 2011-12.

2. Ground No.1 is general in nature and calls for no adjudication.

3. Grounds No.2 & 3 read as follows:-

"2. The learned CIT(A) erred in deleting the disallowance of depreciation of Rs.20,46,677 on energy saving devices without

considering that the assessee was not able to prove that the plants formed part of energy saving plant under Rule 5(1) of I.T. Rules.

3. The learned CIT(A) erred in deleing the disallowance of depreciation on energy saving devices by merely accepting the assessee's alternative contention that the said plants can be classified as sewage treatment plant without the assessee furnishing any evidence/documents etc."

4. The assessee is a company. It is engaged in the business of manufacturing spirits used in making of liquors. While concluding the assessment for A.Y. 2011-12 u/s. 143(3) of the Act, the AO did not allow the claim of assessee for depreciation @ 80% of energy saving devices of the value of Rs.20,46,677.

5. Before the CIT(Appeals), the assessee pointed out that in the business of manufacture of spirit used in making of liquors the Assessee also runs a liquor bottling plant. The manufacturing unit was located in Bidar district of Karnataka. As per the requirements of Karnataka Pollution Control Board (KPCB), it was mandatory for the assessee to install water treatment plant/seweage treatment plant. Accordingly the sewage treatment plant was installed by the assessee in the financial year 2008-09. As per section 32 of the Act, the rate of depreciation on such plant is 80%. It was pointed out that the assessee has been claiming depreciation rightfully @ 80% from AY 2009-10 and in this regard the financial statements, return filed and depreciation scheduled were filed before the CIT(A). it was submitted that in the first year of claim of such depreciation

at 80% in A.Y. 2009-10, depreciation has been allowed by the department at 80%. Copy of the assessment order was also filed before the CIT(A). The assessee pointed out that for the year under appeal, the AO made the disallowance of depreciation in the absence of documentary evidence without appreciating the fact that depreciation on sewage treatment plant has been claimed on the basis of written down value as on 1.4.2010 and no fresh addition to the asset has been made. Copy of depreciation schedule for A.Y. 2011012 was filed. The assessee relied on decisions of *CIT v. Tajmahal Hotel (1971) 82 ITR 44 (SC)*, *CIT v. Madras Cements ltd., 110 ITR 281 (Mad)* and *R.C. Chemicals Industries v. CIT (1982) 134 ITR 380 (Del)* wherein it was held that depreciation on plant & machinery will have to be allowed in the context of business carried out by the assessee. It was contended that the assessee could not have operated without installing the effluent treatment plant and hence the claim of depreciation by the assessee was in order.

6. The CIT(Appeals) on consideration of the above submissions held as follows:-

> "3.3 I have carefully considered the appellant's submissions and also gone through the assessment order. The AO disallowed of Rs.20,46,677/- being 80% depreciation claimed on "Effluent Treatment Plant" on the ground that the appellant failed to explain the higher rate of depreciation on the items with documentary evidence. On the other hand the appellant submitted that during the financial year relevant to the assessment year 2009-10 the appellant company had installed Sewerage Treatment Plant and as per the provisions of section 32 of the Act

the rate of depreciation on such Sewerage Treatment Plant claimed at 80%. Further it is also submitted that assessment for the assessment year 2009-10 was completed u/s 143(3) and the appellant claim of depreciation at the rate of 80% has been accepted. During the previous year relevant to the assessment year under consideration no addition was made and 80% depreciation was claimed on written down value as on 01/04/2010. Thus the AO was not justified in disallowing depreciation of Rs.20,46,677/-.

3.4 In order to verify the appellant's claim, I have verified the financial statement for the financial years 2008-09 and 2009-10 and from it reveals that the appellant installed "Effluent Treatment Plant", with a cost of Rs.1,27,91,731/- during the financial year 2008-09 and in the return of income for the assessment year 2009-10 depreciation claimed at the rate of 80% which is accepted by the AO in the assessment order u/s 143(3) dated 28/12/2011. During the financial year 2009-10 no addition was made and 80% depreciation was claimed on W.D.V. of Rs.25,58,346/-. In view of the facts a report was called for from the AO and in the remand report the AO's opinion is that the percentage of depreciation is governed by Rule 5(1) of Income Tax Rules 1962. All the assets where depreciation of 80% can be claimed are specifically mentioned in appendix-I of the Rules. The Sewerage Treatment Plant is not available in 80% block hence the claim of the appellant company is not acceptable. As explained by the appellant that plant so installed related to Sewerage Treatment device which could be classified under water pollution control equipment and the same is enumerated III (ix) of Part-A in New Appendix-1, wherein rate of' depreciation is more than 80%. On the contrary, the appellant claimed 80% depreciation of total cost of such plant. However, since the genuineness of installation of plant and applicability of higher rate thereon has been accepted, there is no reason to denying the same, in view of fact that no addition was made under this block of asset during the year and depreciation claimed on written down value only. Therefore, disallowance of depreciation of Rs.20,46,677/- is deleted."

7. Aggrieved by the order of CIT(Appeals), the Revenue is in appeal before the Tribunal.

8. We have heard the submissions of the ld. DR, who reiterated the stand of the Revenue as reflected in the grounds of appeal. In our view, the contentions raised by the Revenue in the grounds of appeal are totally without any basis. The CIT(Appeals) has not given any finding as to whether the plant in question formed part of energy saving plant. He has given relief only on the basis that the effluent treatment plant was installed during the F.Y. 2008-09 relevant to A.Y. 2009-10 and the AO in the assessment order dated 28.3.2011 has accepted the fact that effluent treatment plant was to be treated as energy saving plant on which higher rate of depreciation at 80% has to be allowed. The CIT(A) allowed relief only on the reasoning that in the year of installation; classification of an asset falling within a particular block and being eligible for depreciation at a particular rate; has to be ascertained. Once that is done, in a subsequent year it is not possible for the AO to review the correctness of grant of depreciation in an earlier year. In other words, after the introduction of concept of “block of assets”, the assets loose identity the moment they enter the block and therefore the rate of depreciation of a particular item of depreciable asset cannot be tampered with in a subsequent assessment year. In our view, the reasoning adopted by the CIT(Appeals) is just and proper and calls for no interference. Consequently, grounds No.2 & 3 are dismissed.

9. Ground Nos. 4 & 5 read as follows:-

> "4. The learned CIT(A) erred in deleting the disallowance of purchases of Rs.84,48,518 merely on the ground that the AO should have cross verified from the other parties by issue of notice u/s. 133(6) without appreciating that it was the duty of the assessee to furnish the required evidence by way of bills etc.
>
> 5. The learned CIT(A) erred in deleting the disallowance of purchases without appreciating that the assessee failed to prove the genuineness of the purchases and further no document evidence was also produced before the CIT(A) and during the remand proceedings also, the assessee did not furnish any details before the AO."

10. The AO on a scrutiny of trading, profit & loss account noticed that the assessee had claimed expenses on purchase of raw material and coal totaling Rs.3,37,94,070 (2,08,49,432 + 1,29,44,538). Since the assessee did not produce invoices or other documents in support of the aforesaid expenses, the AO disallowed 25% of those expenses which resulted in an addition of Rs.84,48,518 to the total income of the assessee.

11. Before the CIT(Appeals), the assessee contended that its purchases were supported by documentary evidence and that the AO in the course of assessment proceedings required only sample vouchers and complete ledger of purchases, which were provided by the assessee. The assessee pointed out that its books of accounts were audited and the same cannot be held to be incorrect. The assessee also submitted that even in the absence of production of supporting vouchers or bills, the AO has to make necessary enquiries before he makes a disallowance. The assessee relied

on decision of ITAT Delhi Bench in *TSL Defence Technologies P. Ltd., ITA No.942/Del/2011 dated 22.3.2013,* wherein it was held that merely because the expenditure are expensive, that cannot be a ground for disallowance. If it done so, then that would be a disallowance merely on suspicion and presumption. Without prejudice to the above contentions, the assessee filed before the CIT(A) complete list of purchases along with copies of purchase bills.

12. The evidence filed by the assessee was forwarded by the CIT(Appeals) calling for a remand report from the AO. In the remand report dated 23.6.2014, the AO observed that the bills were not produced before him despite enough opportunities. The CIT(Appeals), on a consideration of evidence before him, the remand report and contentions of the assessee, was of the view that since the assessee furnished names & addresses of the parties from whom purchases were made, if the AO entertained doubts on the genuineness of those purchases, he ought to have cross verified from the parties by issue of notice u/s. 133(6) of the Act. The AO cannot merely for absence of bills and invoices, make disallowance. In coming to the aforesaid conclusion, the CIT(A) placed reliance on *TSL Defence Technologies P. Ltd*. He accordingly deleted the addition made by the AO.

13. Aggrieved by the order of CIT(Appeals), the Revenue has raised grounds No.4 & 5 before the Tribunal.

14. We have heard the submissions of the ld. DR, who relied on the grounds of appeal.

15. We have considered his submission and are of the view that there is no merit in grounds No.4 & 5 raised by the Revenue. It is no doubt true that it is the duty of assessee to furnish evidence to substantiate expenses in the trading, profit & loss account. According to the assessee, the AO only called for sample vouchers and ledger of purchases and therefore purchase bills were not produced. This fact has not been denied in the remand report filed by the AO before the CIT(Appeals). Therefore, there was sufficient reason for the assessee to file purchase bills evidencing purchase of raw materials and coal before the CIT(A). In the remand report, there is no complaint by the AO that the purchase bills were not believable or the AO did not think it fit to make any further enquiry on the supporting bills filed by the assessee before the CIT(A). In these circumstances, the very basis on which disallowance was made by the AO no longer survives. Even on that basis, the CIT(A) could have allowed relief. Nevertheless, the CIT(A)'s conclusion was on the basis that the AO should have cross-verified from the parties from whom the assessee claimed to have made purchases. In our view, the ultimate conclusions of the CIT(Appeals) that disallowance cannot be sustained is just and proper and calls for no interference. Accordingly grounds No.4 & 5 are dismissed.

16. Ground No.6 reads as follows:-

> "6. The learned CIT(A) erred in deleting the addition of Rs.1,83,09,432 on account of share application money u/s. 68 of I.T. Act by merely accepting the letter of one Mr. Jitendera Virwani who is supposed to have lent Rs.1,35,00,000/- to Sri Malkani one of the share applicant without appreciating that the assessee could not prove the genuineness of the transaction even during the remand proceedings before the AO."

17. During the previous year, the assessee had received share application money to the tune of Rs.1,83,09,432. According to AO, the assessee failed to furnish details to prove the identity of investor, creditworthiness and genuineness of the transaction. The AO therefore made an addition of Rs.1,83,09,432 to the total income of the assessee u/s. 68 of the Act.

18. Before the CIT(Appeals), the assessee filed confirmation letter from one Mr. Balakrishna Malkani, director of assessee who claimed that he had given the aforesaid amount as share application money to the assessee. The confirmation together with details of sources from which Balkrishna Malkani received funds which were given as share application money were furnished. This is in the form of confirmation letter from one Jitendra Virwani who claimed to have paid a sum of Rs.1,35,00,000 to Balkrishna Malkani in the following manner:-

Cheque No.	Date	Amount	Remarks
092862	12/08/2010	Rs.1,00,00,000	Drawn on Citi Bank
029651	21/09/2010	Rs. 35,000	- do -
	Total	Rs.1,35,00,000	

19. The documents were forwarded to the AO. In the remand report, the AO did not raise any objection except stating that assessee was given opportunity to furnish necessary proof in the assessment proceedings, but has not filed any such evidence. The CIT(A) on a consideration of the evidence and the remand report of the AO, was of the view that even before the AO, PAN, bank statement, copy of income tax returns in respect of Balkrishna Malkani had been filed. According to the CIT(A), the evidence filed before him established the source of funds of Balkrishna Malkani to the extent of Rs.1,35,00,000 as it was evidenced by a borrowing from Jitendera Virwani through banking channels. With regard to source of funds in respect of remaining share application money of Rs.48,09,432, the CIT(Appeals) was of the view that no evidence was furnished by the assessee to prove the source of investment in share application money of Balkrishna Malkani. He therefore confirmed the addition to the extent of Rs.48,09,432 and deleted the addition to the extent of Rs.1.35 crores.

20. Aggrieved by the order of the CIT(Appeals), the Revenue has raised ground No.6 before the Tribunal.

21. The ld. DR reiterated the stand of Revenue as reflected in the grounds of appeal raised before the Tribunal.

22. We have considered his submission and are of the view that the same is without any merit. It is clear from a reading of the grounds of appeal of the Revenue that, Revenue is satisfied with regard to identity and

creditworthiness of the transaction. On this aspect, in the remand report filed by the AO before the CIT(Appeals), no facts have been stated as to why the claim of the assessee and genuineness of the transaction should be doubted. As we have already seen, a sum of Rs.1.35 crores was received by Balkrishna Malkani from Jitendra Virwani by cheques and the same have been reflected in the income tax returns of Balkrishna Malkani as loans and the corresponding investment in the share application money of the assessee is also reflected. In such circumstances, there is no merit in ground No.6 raised by the Revenue and the same is dismissed.

23. In the result, the appeal by the Revenue is dismissed.

Pronounced in the open court on this 30th day of July, 2015.

Sd/-	Sd/-
(ABRAHAM P. GEORGE) Accountant Member	(N.V. VASUDEVAN) Judicial Member

Bangalore,
Dated, the 30th July, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.