

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं

श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.410/Vizag/2014

(निर्धारण वर्ष / Assessment Year: 2005-06)

**DCIT, Circle-2(1),
Guntur**

Vs.

**M/s. Venkatarama Poultries Ltd.,
Guntur**

[PAN: AAACV7767L]

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri M.K. Sethi, DR

प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 01.05.2017

घोषणा की तारीख / Date of Pronouncement

: 08.06.2017

आदेश / ORDER

PER V. DURGA RAO, Judicial Member:

This appeal filed by the revenue is directed against order of the CIT(A), Guntur dated 31.3.2014 and it pertains to the assessment year 2005-06.

2. The brief facts of the case are that the assessee is a company engaged in the business of poultry farm filed its return of income for the assessment year 2005-06, admitting total income of ₹ 33,14,260/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act'), accepting the returned income of ₹ 33,14,260/-. Subsequently, the case has been re-opened u/s 147 of the Act, for the reason that income chargeable to tax had been escaped assessment within the meaning of section 147 of the Act on account of excess claim of depreciation of ₹ 70,35,446/-, interest on loans amounting to ₹ 41,12,832/-, long term capital gain of ₹ 56,11,095/- and short term capital gain of ₹ 4,50,397/-. The case has been selected for scrutiny and accordingly, notice u/s 143(2) & 142(1) of the Act were issued. In response to notices, the authorized representative of the assessee appeared from time to time and furnished relevant details.

3. During the course of assessment proceedings, the A.O. issued a show cause notice and asked the assessee to furnish the details of sheds constructed, cages and automobiles, details of agricultural loan availed, details of long term capital gains and short term capital gains. In response to notice, the assessee has filed relevant details of

construction of sheds, cages and automotives and also filed details of agricultural loan availed along with sanction letters. The assessee also filed details of purchases and sales of shares to justify long term capital gains and short term capital gains declared in the return of income. The A.O. after considering the details filed by the assessee, accepted claim of long term capital gain and short term capital gain computed by the assessee. The A.O. also accepted agricultural loan availed by the assessee and interest debited to profit & loss account. However, in respect of depreciation on sheds constructed, cages and automotives re-worked depreciation claimed by the assessee by holding that the assessee has failed to provide necessary details of completion of construction of sheds and put to use them on or before 30th September. Therefore, re-computed depreciation on total shed construction, cages and automotives and allowed 50% of normal depreciation on the ground that the assessee has completed construction of sheds and put to use them for less than 180 days. Similarly, in respect of interest debited to profit & loss account towards term loan, disallowed an amount of ₹ 52,31,854/- and added back to the total income on the ground that the assessee has failed to produce any documentary evidence to prove the completion of construction of sheds and put them for use.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated the submissions made before the A.O. The assessee further submitted that in respect of construction of sheds, it is a continuous process and these sheds are constructed one after another, as per the requirement based on the number of birds to be housed. During the year, it had constructed 9 sheds, out of which 3 sheds have been completed before September and the remaining 6 sheds have been completed after September and accordingly, computed depreciation as per the provisions of law. In support of its arguments, furnished necessary details of construction and also produced details of eggs and chicks to prove the completion of construction of sheds before September and after September. Similarly, in respect of interest on loan, the assessee has filed loan sanction letters and also ledger extracts of term loans to prove the payment of interest.

5. The CIT(A) after considering relevant submissions of the assessee and also taken into account the details filed by the assessee like construction details and bank term loan details observed that the assessee has rightly computed full depreciation on sheds, cages and automotives constructed and put to use on or before September and

half of the normal depreciation on sheds, cages and automotives, constructed and put to use after September. In so far as interest debited to profit & loss account, CIT(A) observed that the assessee has filed necessary details to prove the completion of construction of sheds, cages and automotives and also correctly computed depreciation to be capitalized and depreciation to be debited to profit & loss account as revenue expenditure. Accordingly, out of total interest expenditure of ₹ 52,31,854/-, directed the A.O. to disallow an amount of ₹ 6,96,299/- and the balance amount is deleted. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

6. The first issue that came up for our consideration is disallowance of excess depreciation claimed by the assessee. The A.O. re-worked depreciation claimed by the assessee on sheds, cages and automotives on the ground that the assessee has failed to file necessary evidences to prove completion of construction of 3 sheds and also cages and automotives installed on the said 3 sheds. It is the contention of the assessee that construction of shed is a continuous process and these sheds are constructed one after another, as per the requirement based on the number of birds to be housed. The assessee further contended that during the year it has constructed 9 sheds, out of which 3 sheds

have been constructed and put to use before September and 6 sheds have been constructed and put to use after September and accordingly, claimed depreciation allowance as per the provisions of law.

7. The assessee has filed necessary details of construction of sheds and also installation of cages and automotives to prove the computation of depreciation. The assessee has filed purchase details of assets and also produced details of eggs and chicks to prove that the construction of sheds is a continuous process. The CIT(A) after considering relevant details filed by the assessee deleted additions made by the A.O. towards excess claim of depreciation. The relevant portion of the CIT(A) order is extracted below:

"I have perused the submissions made by the appellant as well as the evidence submitted, including account statements of the term loan accounts. The evidence clearly shows that the first disbursement of ₹ 3 crores took place by 14th September, 2004 while the second disbursement had taken place by 9th March, 2005. Moreover, the production of eggs had shown a quantum jump from April, 2004 onwards indicating thereby that new birds had been housed in the poultry farm, which would indicate that the sheds were being completed on ongoing basis from April onwards. In view of the same, the claim of the appellant is found to be in order. It is seen that in respect of sheds, the appellant has claimed depreciation @ 10% on the opening W.D.V. and construction prior to September, 2004 and @ 5% on sheds completed between 30.9.2004 and 31.3.2005. In respect of cages and automotives, the appellant has similarly claimed depreciation @ 25% on opening W.D.V. and cages completed prior to 30.9.2004. On cages completed after 30.9.2004, depreciation at half the normal value i.e., 12.5% has been claimed. Verification of the same clearly shows that the depreciation has been correctly computed and as discussed above, the appellant's claim regarding completion of 3 sheds and cages prior to 30.9.2004 and 6 sheds between 30.9.2004 and 31.3.2005 has been found

to be in order. Hence, the claim of depreciation is correct and the disallowance made is deleted. Appeal on grounds no.1 to 3 is allowed."

8. The facts remain unchanged. The revenue has failed to bring on record any evidence to prove the finding of facts recorded by the CIT(A) is incorrect. On the other hand, the assessee has filed necessary details to support the findings of the CIT(A) in the form of purchase bills of assets and also furnished production details, which strengthens the claim of the assessee that 3 sheds have been completed before September. Therefore, we are of the considered view that the assessee has rightly computed depreciation on sheds, cages and automotives in accordance with law. The CIT(A) after considering relevant details has rightly deleted additions made by the A.O. We do not find any error in the order of the CIT(A). Hence, we are inclined to uphold the CIT(A) order and dismiss ground raised by the revenue.

9. The next issue that came up for our consideration is disallowance of interest debited to profit & loss account. The A.O. disallowed interest paid on term loan of ₹ 52,31,854/- for the reason that the assessee has failed to produce any documentary evidence to prove completion of construction of sheds and cages and put to use. It is the claim of the assessee that construction of sheds, cages and automotives is a continuous process and the construction has been completed one after

another, as per the requirement based on the number of birds to be housed. The assessee has filed necessary details to prove the completion of construction before September. The CIT(A) after considering relevant details filed by the assessee has deleted additions made by the A.O. towards interest debited to profit & loss account. The relevant portion of the CIT(A) order is extracted below:

"I have perused the submissions made as well as the bank account statements submitted by the appellant. The total interest has been correctly computed at ₹ 52,31,854/-. Further, the appellant himself has computed the amount of interest, which should have been capitalized, being interest on preconstruction period amounting to ₹ 6,96,299/-. Thus, the addition of ₹ 52,31,854/- is restricted to ₹ 6,96,299/- and the balance amount is deleted. Appeal on ground no.4 is partly allowed."

10. The facts remain unchanged. The revenue fails to bring on record any evidences to prove the findings of the facts recorded by the CIT(A) are incorrect. Therefore, we uphold the CIT(A) order and dismiss ground raised by the revenue.

11. In the result, the appeal filed by the revenue is dismissed.

The above order was pronounced in the open court on 8th Jun'17.

Sd/-
(जी. मंजुनाथा)
(G. MANJUNATHA)

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 8.6.2017

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The DCIT, Circle-2(1), Guntur
2. प्रत्यार्थी / The Respondent – M/s. Venkatarama Poultries Ltd., Guntur
3. आयकर आयुक्त / The CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT(A), Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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वरिष्ठ निजी सचिव (Sr.Private Secretary)
आय कर अपीलीय अधिकरण, विशाखापटणम /
ITAT, VISAKHAPATNAM

