IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं/.**ITA No.1218/Kol/2015**

(**निर्धारणवर्ष /** Assessment Year : 2010-11

DCIT, Cir – 11(1), Kolkata P-7, Chowringhee Square, Kolkata – 700 069	Vs.	**M/s. Bengal Beverages Pvt. Ltd.** 6, Alipore Park Road, Alipore, Kolkata – 700 027
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. : AABCB5984E		
(**Revenue/Department**)	..	(**Assessee**)

Assessee by : Shri S. K. Tulsiyan, Advocate

Revenue/Department by : Shri R. P. Nag, ACIT (DR)

सुनवाईकीतारीख **/Date of Hearing : 10/08/2017**

घोषणाकीतारीख**/Date of Pronouncement: 06/10/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the order passed by the ld. Commissioner of Income Tax(Appeals)-4, Kolkata, in Appeal No. 502/CIT(A)-4/Circle-11/Kol/14-15, dated 06.07.2015, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 08.03.2013.

2. The Revenue has raised the following grounds of appeals:

"That on the facts and in the circumstances of the case, ld CIT(A) has erred in deleting disallowance of additional depreciation of Rs.90,56,200/- U/s 32(1)(iia) of the I.T.Act,1961, relating to visicooler machine."

3. The brief facts qua the issue are that during the assessment year under consideration, the assessee company was engaged in the business of manufacture of soft drinks, generation of electricity through wind mill and manufacture of pet bottles for packing of beverages. The assessee claimed additional depreciation on Visocooler amounting to Rs.90,56,200/-(Rs.41,67,159 + Rs.4,88,904). The assessing officer disallowed the claim of additional depreciation. The assessing officer observed that these Visicoolers were kept at the distributors` premises and not at the factory premises of the assessee company. The assessee submitted before the AO that Visicoolers are required to be installed at the delivery point to deliver the product to the ultimate consumer in chilled form, therefore these are part of assessee`s plant. However, the AO rejected the assessee`s contention and held thatassessee is not carrying out manufacturing activity on the product of the retailer at retailer`s premises and merely chilling of aerated water cannot be termed as manufacturing activity and even that chilling job is the activity of the retailer and not of the assessee. This way, the assessing officer has disallowed the assessee`s claim of additional depreciation of Rs.90,56,200/-.

4. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who had deleted the addition made by AO. During the course of the appellate proceeding, the assessee explained to CIT(A) that the law does not specifically lay down the condition that the assets had to be installed in the premises of the assessee company and that the twin conditions of owning the assets and putting them to use for business purpose were enough for claiming depreciation which is not a disputed fact. The Assessee submitted before the CIT(A) that assessee does business at a state level and hence cold drinks manufactured by it are distributed from its Dankuni plant (manufacturing unit) to the different designated districts of West Bengal. The soft drinks are preferred by consumers when they are cold, but in view of the above facts it stands

established that, by the time the end product namely soft drinks reach the ultimate outlets/retailers, it is hot due to weather conditions in West Bengal and thus non-consumable.Therefore, to cut upon the effect of the above facets and to fulfil its objective of serving chilled soft drinks to the customers, the assessee takes help of a refrigerating device called "visicooler". The assessee submitted that although the aforementioned refrigerating device called "visicooler" is not installed within its manufacturing unit, the same forms very much part of the manufacturing process of soft drinks and stands directly incidental to its trading activity/sales volume in a Financial Year.The assessee submitted that a common and popular slogan circulated vide mass media for identification of soft/cold drinks is *"ThandaMatlab Coca-Cola".*Itwas submitted that if proper application of mind is put on the above mentioned slogan, it shall stand crystal clear, that soft/cold drinks are preferable and acceptable to consumers when they are served in a chilled condition. It is arequisite to serve cold drink to a customer in a chilled condition; otherwise the consumer shall not consume the same.The assessee would like to submit that the manufacturing process up to boiling, packing and distributing is not enough to boost its sales volume, until and unless soft drinks are served to the ultimate consumers in a chilled and consumable condition.

Therefore, assessee submitted that 'visicooler' actually forms a part of plant although not installed in its manufacturing unit for the assessee company as it is necessary for supplying the soft drinks in its consumable state i.e. in a cold/chilled condition. In effect, the manufacturing process of the assessee does not end at the factory but continues till the supply of the same to the consumer in the cold state for which visicoolers are an integral and necessaryrequirement. Therefore, visicoolers are part of the manufacturing process and part of plant and machinery.

The assessee explained the provisions of section 43(3) of the Income Tax Act, 1961,which reads as follows.

Section 43. Definitions of certain terms relevant to income from profits and gains of business or profession.

"In section 28 to 41, and in this section, unless the context otherwise requires-

> *(3) "plant includes ships, vehicles, books, scientific apparatus and surgical instrument used for the purpose of business or profession [but does not include tea bushes or livestock] [or buildings or furniture and fittings]"*

An analysis of the aforesaid provision i.e. Section 43(3) of Income Tax Act, 1961 shows that the word 'plant' as defined therein includes any movable item/object which is used and stands incidental for the purpose of business or profession.

In support of the above contention, the assessee submitted the judgment of the Hon'ble Supreme Court of India in the matter of Scientific Engineering vs. CIT reported in [1986] 157 ITR 86 (SC).The Apex Court of India observed therein the aforesaid matter that "The intention of the legislature was to give the word "plant" a wide meaning.The Apex Court further held that the "the word "plant" was not necessarily confined to an apparatus which was used for mechanical operation or process or was employed in mechanical or industrial process. The test to be applied was: Did the article fulfil the function of a plant in the assessee's trading activity? Was it a tool of his trade with which he carried on his business? If the answer was in the affirmative, it would be a plant."

In view of the above precedent and law of the land as per Article 144 of the Indian Constitution, the assessee submitted that if facts of the concerned case are perused, it can be seen that the apparatus called 'Visicooler' very much falls within', the definition of plant enshrined under Section 43(3) of the Income Tax Act, 1961.

The assessee further submitted that as per the decision of the Hon'ble Supreme Court of India in the matter of Scientific Engineering vs. CIT reported in [1986] 157 ITR 86 (SC), an apparatus shall be a "plant" if:

- The article fulfils the function of a plant in the assessee's trading activity
- The article is a too/ of trade
- The article facilitates trading/business activities
- The article may not/maybe used for mechanical operation or process

Therefore, the assessee submitted that if the role played by 'visicooler' is taken into consideration in the concerned case, it can be seen that it fulfils all the above conditions. To be specific a 'visicooler' in the assessee's case accelerates its business activities by boosting its sales volume & profit ratio. Further it also gives effect to the mechanical operation/process of serving chilled cold drinks to the customers which to be noted is one of the most important necessities in order to be able to sell its products.From the above connotation, the visicooler is an essential plant for assessee's products to make it in chilled/saleable/consumable condition. Hence, in view of the above submissions and judicial authority it stands established that 'visicooler' in the assessee's case is a 'plant', which accelerates its trading activities & manufacturing process.

The assessee also relied on the following judgments:

In CIT vs. Elecon Engineering Co, Ltd. reported in [1987] 166 ITR 66 (SC) it was held by the Hon'ble Supreme Court of India that "the word 'plant' in its ordinary meaning is a word import and it must be broadly construed having regard to the fact that articles such as books and surgical instruments were expressly covered within the definition of plant under Section 43(3) of the Act."

The Court further held that "the word "plant" would include any article or object, fixed or immovable, Used by a businessman for carrying on his business."

In Commissioner of Income-tax v. Saurashtra Bottlings Pvt. Ltd reported in [1988] 232 ITR 270 (Guj) it was held that "The provisions regarding depreciation allowance get attracted when a plant is used for the business of the assessee. The expression "plant" has not been extensively defined and Section 43(3) of the Income-tax Act, 1961, provides only an inclusive definition, which was the effect of adding items mentioned thereunder to the meaning of the word "plant" as understood in its ordinary sense. The word "plant" as defined in the Oxford English Dictionary means "fixtures, implements, machinery and apparatus used in carrying on any industrial process". The word "apparatus" would mean the equipment needed for a particular purpose or function, and the word "equipment" would mean the necessary articles, etc., for a purpose. The word "plant" in its ordinary sense would, therefore, mean the equipment needed for a particular purpose or function. Such equipment can be any article, which may be necessary for a purpose. In the context of business, therefore, a plant would mean any equipment or article necessary for the purpose of that business. The articles or equipment which it may become doubtful to read into the plain meaning of the word "plant" are added to that meaning so that no doubt may arise in that regard.

The assesseealso explained to CIT(A) the provisions of section 32(iia) of the Income Tax Act, 1961. Section 32(iia) of the Income Tax Act, 1961 reads as.

“Depreciation.

32. (1) [n respect of depreciation of---

[(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after 31st day of

March,2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty percent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii): Provided that no deduction shall be allowed in respect of---

(A)Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B)Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or

(C)Any office appliances or road transport vehicle; or

(D) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;]"

The assessee submitted that a close observation of the aforementioned provision implies that an assessee is entitled to additional depreciation of a further sum equal to twenty percent of the actual cost of such plant & machinery under Income Tax Act, '1961 when:

- A new machinery or plant (other than ships and aircraft), is acquired and installed after 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing.
- The machinery or plant which before its installation by the assessee, was not used either within or outside India by any other person; or
- The machinery or plant is not installed in any office premises or any residential accommodation, including accommodation in the nature of a quest house
- The plant or machinery is not in the nature of an office appliances or road transport vehicles: or

- The whole of the actual cost of the machinery or plant has not been allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year

In view of the above, the assessee submitted that it is already an established fact that **'visicooler'** is a **'plant'** incidental for manufacturing process in the concerned case.

5. Considering the above submissions of the assessee, the ldCIT(A) held thatthe main focus of the AO for disallowing the claim of additional depreciation under Section 32(iia) was on the following reasons:

- The viscicooler was not used by the assesseeat its own premises but at the premises of the distributor;

- The visicooler cannot be said to be used for manufacture of cold drinks.

The ldCIT(A) observed that section 32 of the I.T. Act grants deduction on account of depreciation. The depreciation shall be allowed if owned by the assessee and used for the purposes of business or profession. Save and except these two conditions no further or additional conditions are required to be fulfilled by an assessee so as to claim deduction by way of depreciation. The AO is of the view that the asset was although owned by the assessee but it was not used by the assessee itself and accordingly the claim for additional depreciation was unjustified. The provision states that plant & machinery owned by an assessee is to be used for the "purposes of business". It nowhere provides that the asset has to be used by the assessee in its own premises by itself. The expression for the "purposes of business" as used in the Act has a wider connotation. In order to prove that an asset is used "for the purpose of business" it is not necessary to prove the first degree nexus between the "use of asset" and "its use by the assessee himself". So long as

the use of the asset; directly or indirectly, benefits or enables an assessee to carry on its business; it will be sufficient to satisfy the criteria of "use for the purpose of business". In fact this particular aspect was specifically dealt with by the Supreme Court in the case of ICDS Ltd Vs. CIT (29 taxmann.com 129) where the Court while interpreting this condition held that the language of Section 32 did not mandate usage of the asset by the assessee itself. The Court observed that so long as the asset is used or utilized for the purposes of business, the requirement of Sec 32 stands satisfied, not withstanding non usage of the asset itself by the assessee. ThereforeCIT(A) held that the reason cited by the AO for disallowing the claim of additional depreciation does not hold any water. The assessee's contention that usage of visicooler at the distributor's premises so as to ensure that the "cold" drink is served "cold" to the ultimate consumer tantamount to usage in the course and for the purposes of business was upheld by CIT(A). Therefore, CIT(A) deleted the addition made by AO.

6. Not being satisfied with the order of CIT(A), the Revenue is in appeal before us. The Ld DR for the Revenue,has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Whereas, the ld Counsel for the assessee has defended the order passed by the CIT(A).

7. Having heard the rival submissions, perused the material available on record, we are of the view that a close and careful perusal of the provision shows that the benefit of additional depreciation is available to an assessee engaged in the business of manufacture of article or thing upon the actual cost of plant & machinery. It is therefore clear that the benefit is available on the plant & machinery only to those assessees who are manufacturers and it is not restricted to plant & machinery used for manufacture or which has first degree nexus with manufacture of article or thing. We note that the second condition cited by the AO in the impugned order is not borne from the

provisions of Section 32(1)(iia) of the Act. The conditions laid down in Section 32(1)(iia) is that if the assessee is engaged in manufacture of article or thing then it is entitled to additional depreciation on entire additions to plant & machinery provided the items of addition does not fall under any of the exceptions provided in clauses (A) to (D) of the proviso. In the present case the assessee is engaged in the business of manufacture of cold drinks. This fact has not been disputed by the AO. The AO has categorically observed that the assessee's nature of business is manufacture of cold drinks. We therefore find that the assessee is legally entitled to avail the benefit of additional depreciation under Section 32(1)(iia) of the Act. The "visicooler" is a "plant & machinery". The said item falls within the category of "plant & machinery" as laid down in the I.T. Rules, 1962. The "visicooler" also does not fall within the exceptions provided in clauses (A) to (D) of the proviso to Section 32(1)(iia) of the Act.

We note that the assessee is in the business of manufacturing and sale of Coca-Cola, which is a soft drink. Since the assessee is situated at a long distance and the product has to be sold at long distance, the Coca-Cola becomes hot due to the humid weather in the State of West Bengal. It is a known fact that soft drink, like Coca-Cola, cannot be consumed in hot state, whereas it is preferred by majority of customers as a cold drink. So, the assessee, in order to sell its final product to the customers, in various parts of the state required to give the Coca-Cola, in cold state for which the assessee has purchased, the tool, to keep the same in cool condition by the machine called ‘Visicooler’. The test laid down by Hon’ble Supreme Court in the case of Scientific Engineering vs. CIT (supra), was: Did the article fulfil the function of a plant in the assessee's trading activity? Was it a tool of his trade with which he carried on his business? If the answer was in the affirmative, it would be a plant.

When the aforesaid test is applied in the case of Visicooler, the answer is in the affirmative, that is, the Visicooler is a tool which is necessary for carrying out, the business of the assessee, therefore, we do not find any infirmity in the order of CIT(A).Hence, we confirm the order passed by CIT(A).

8. In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this 06/10/2017.

Sd/-	**Sd/-**
(A.T. VARKEY)	**(DR. A.L.SAINI)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata; दिनांक Dated 06/10/2017
RS, SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee- M/s. Bengal Beverages Pvt. Ltd.
2. प्रत्यर्थी/ The Revenue-DCIT, Cir – 11(1), Kolkata
3. आयकरआयुक्त)अपील (/ The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि ,आयकरअपीलीयअधिकरण ,कोलकाता/ DR, ITAT, Kolkata
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By Order

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