

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

	I.T.A. No. 3932/DEL/2016		
	A.Y. : 2008-09		
ACIT, CIRCLE 12(1), NEW DELHI	VS.	M/S INDO EUROPEAN BREWRIES LTD., B-74/2, WALUJ, MIDC, AURANGABAD-431136 (PAN: AAACI5228H)	
(ASSESSEE)		(RESPONDENT)	

Revenue by : Sh. Amit Katoch, Sr. DR.
Assessee by : Sh. Somil Agarwa;. Adv. &
Dr. Rakesh Gupta, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 05.4.2016 of the Ld. CIT(A)-4, New Delhi relevant to assessment year 2008-09.

2. The grounds raised in the appeal read as under:-

- i) On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition

made of Rs. 81,67,860/- on account of bogus claim of depreciation.

- ii) The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time or during the hearing of appeal.

3. The brief facts of the case are that assessee e-filed a digitally signed return of income on 26.9.2008 returning income of Rs. 81,29,459/-. The return of the assessee was processed under the provisions of section 143(1) of the Income Tax Act, 1961 (in short "Act") on 06.8.2009 wherein, the returned income was accepted. From the details filed during assessment proceedings AO observed that the assessee is the authorized bottler of soft drinks for M/s Coca Cola India Private Limited. The Assessing Officer issued notice u/s. 143(2) of the Act on 6.8.2009 which was duly served upon the assessee on 12.8.2009. Further, notice u/s. 142(1) of the Act were issued on 1.9.2010, 11.10.2010 and 8.12.2010 and were also served on the assessee by speed post. In response to the same the AR of the assessee attended the proceedings alongwith

Manager (Finance) of the assessee company and filed submission called for. The AO observed that for the assessment year under consideration assessee company claimed depreciation to the tune of Rs. 81,67,860/- @ 100% of the cost of asset described as 'ETP System' stated to be supplied to the assessee by M/s Praneet Enviroquips Private Limited having address at D-169, Industrial Area, Phase-7, Mohali (PB) 160055. The AO conducted enquiries vide letter issued u/s. 133(6) of the Act from the said M/s Praneet Enviroquips Private Limited and asked the said company to submit details in respect of the said transaction. In reply thereof, the said company denied the transaction of supplying any effluent treatment plant to the assessee. On being confronted the assessee explained to the AO that the said equipment was purchased from one Sh. Narender Mahindra of Delhi and was received in Aurangabad on 22.08.2007 who provided the Bill of M/s Praneet Enviroquips Private Limited. However, assessee could not confirm as to from where the said Shri Narender Mahindra had procured the material i.e. from M/s Praneet Enviroquips Private Limited or from somewhere else. Assessee also explained to the AO that it had no direct

dealing with M/s Praneet Enviroquips Private Limited, and as such assessee was not in a position to comment on the invoice supplied by said Shri Narender Mahindra. However, the AO did not accept the submissions made before him. According to the AO as the assessee failed to submit any evidences in the form of any payment having been made to the vendor towards this purchase and he disallowed the claim of depreciation of the assessee on 'ETP System' of Rs. 81,67,860/- vide his assessment order dated 15.12.2010 passed u/s. 143(3) of the Act by assessing the total income at Rs. 162,97,320/-. Aggrieved by the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 05.4.2016 has allowed the appeal of the assessee. Against the impugned order dated 05.4.2016 of the Ld. CIT(A), assessee is in appeal before the Tribunal.

4. At the time of hearing, Ld. Sr. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal. He submitted that assessee company claimed depreciation to the tune of Rs. 81,67,860/- @ 100% of the cost of asset described as 'ETP System' stated to be supplied to the

assessee by M/s Praneet Enviroquips Private Limited having address at D-169, Industrial Area, Phase-7, Mohali (PB) 160055. The AO conducted enquiries vide letter issued u/s. 133(6) from the said M/s Praneet Enviroquips Private Limited and asked the said company to submit details in respect of the said transaction. In reply the said company denied the transaction of supplying any effluent treatment plant to the assessee. On being confronted the assessee explained to the AO that the said equipment was purchased from one Sh. Narender Mahindra of Delhi and was received in Aurangabad on 22.08.2007 who provided the Bill of M/s Praneet Enviroquips Private Limited. However, assessee could not confirm as to from where the said Shri Narender Mahindra had procured the material i.e. from M/s Praneet Enviroquips Private Limited or from somewhere else. He further submitted that Assessee also explained to the AO that it had no direct dealing with M/s Praneet Enviroquips Private Limited, and as such assessee was not in a position to comment on the invoice supplied by the said Shri Narender Mahindra. However, the AO did not accept the submissions made before him and therefore, AO has observed that as the assessee failed to submit any

evidences in the form of any payment having been made to the vendor towards this purchase and rightly disallowed the claim of depreciation of the assessee on 'ETP System' of Rs. 81,67,860/-, which does not need any interference on our part. Therefore, he requested that the appeal filed by the Revenue may be allowed by cancelling the order passed by the Id. CIT(A) and restore the assessment order passed by the Assessing Officer.

5. On the contrary, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that he has filed the written submissions before the Ld. CIT(A) and the same may be treated as his arguments before this Bench. He draw our attention towards the written submissions filed by the assessee before the Id. CIT(A) which are at pages 1-36D of the Paper Book filed before the Bench which contains total pages 1-77 in which he has attached the various documentary evidences supporting the impugned order and requested to uphold the order of the Ld. CIT(A) and appeal of the revenue may be dismissed.

6. We have heard both the parties and perused the relevant records, especially the orders of the revenue authorities as well as the Paper Book filed by the assessee. We find that assessee claimed 100% depreciation of the cost of asset described as Effluent treatment Plant System (in short "ETP") purchased during the assessment year under consideration which amounts to Rs. 81,67,860/-. The AO disallowed the claim of the assessee on the ground that on query made u/s 133(6) of the Act M/s. Praneet Enviroquips Pvt. Ltd. did not confirm the supply of effluent treatment plant to the appellant. When confronted these facts, assessee filed various evidences which were placed by the assessee during the course of assessment proceedings before the AO and also various evidences which were not considered by the AO during the course of assessment proceedings. The evidences have also been examined by the Ld. CIT(A). On being confronted by the Assessee confirmed to the AO that the said equipment was purchased from one Shri Narender Mahindra of Delhi, and the goods were received on 22.8.2007 in Aurangabad. We further note from the assessment order that assessee stated that it was concerned with the material received alongwith the bill of

M/s Praneet Enviroquips Private Limited. Assessee stated that since the bill was of M/s Praneet Enviroquips Private Limited and was supplied by Mr. Narender Mahindra, and the material was received in good condition, the assessee has no reason to doubt the veracity of the invoice. On the contrary the AO also stated in the impugned order that assessee failed to submit any evidence to substantiate the fact that any equipment has reached the assessee at all on the date so claimed. We find that Ld. CIT(A) has examined the bill of M/s Praneet Enviroquips Private Limited which describes the goods as a part of Effluent Treatment Plant. We further note that Ld. CIT(A) also examined agreement to Purchase and sale entered into between the assessee and Mr. Narender Mahindra Proprietor of M/s Mahindra Engineering Corporation, X-37, Lohan Mandi, Naraina, New Delhi-II0028, which is for purchase of parts of Effluent Treatment Plant. The copy of Annexure A forming part of the agreement confirms the amount of Rs.87,61,859/- for various parts to be purchased which shows that the said party was required to supply the most of the material of "Praneet make". The purchase order also describes the material and the value. Plant's parts were sent from Delhi to Aurangabad as per

Lorry Receipt No-015282 dated 18.08.2007 of M/s Delhi M.P. Freight Carriers which was again got confirmed by the assessee on 11.06.2011 from one Mr. Tanuj Jain Proprietor of Delhi M.P Freight Carriers i.e the transporters, who carried the material from Delhi to Aurngabad premises of the assessee company. We further note that Ld. CIT(A) has also examined the relevant pages of Material Inward Register maintained by the assessee which confirms the receipt of invoice of M/s Praneet Enviroquips Private Limited. It is seen from the details placed on record that all payment were made to M/s Mahindra Engineering Corporation through banking channel except an amount of Rs. 5,565/- in cash. Assessee has also placed a copy of the death certificate of Mr. Narender Mahindra who expired on 07.10.2009 before the Ld. CIT(A). Thus, payment made to M/s. Mahindra Engineering Corporation for purchase of the equipments cannot be brushed aside. This fact is not denied that assessee's company was engaged in the business of soft drink bottling and was using the Effluent Treatment Plant, for treatment of effluent generated during the bottling work of M/s. Coca Cola India Private Limited. It was noted that bottling plant of the assessee company was required to meet

the parameters of the Pollution Control Board. A team of the Coca Cola India Pvt. Ltd. visited the unit of the assessee at Aurangabad on 18.12.2006 and found some deficiency in the plant including ETP. In order to meet out the deficiency find out by the technical team of Coca Cola, assessee was required to renovate its plant on urgent basis and therefore, the quotations were called. M/s Mahindra Engineering Corporation were the lowest one as such the order was placed on them by the assessee for supply of said equipments. M/s Mahindra Engineering Corporation supplied the material stated to be manufactured by M/s Praneet Enviroquips Private Limited as such no doubt arose to the assessee on receipt of the bill of M/s Praneet Enviroquips Private Limited. We further note that Ld. CIT(A) has carefully considered the Inspection Report of Maharashtra Pollution Control Board dated 05.10.2007 who visited the factory of the assessee company at Aurangabad from time to time and their reports which are related to inspection of Effluent Treatment Plant which confirms the operation of ETP(Plant), and other observation made about ETP plant. This confirms the repairs carried out by the assessee in its ETP plant. It is also not out of place, to mention here that

on 21.05.2007 when the plant was inspected by the officials of the Maharashtra Pollution Control Board they found leakages in pipe lines carrying effluent from ETP to disposal site. They have specifically mentioned in their report that all resulted pipes are required to be changed and to meet the other adverse observations mentioned and assessee company was directed to remove the same with in a period of 30 days. This all confirmed that assessee was to get repaired its Effluent Treatment Plant as per directions of the Maharashtra Pollution Control Board. Merely because a bill submitted by the assessee was bogus or fabricated cannot negate the other evidences such as the inspection carried out after repair of the ETP plant by the officials of the Maharashtra Pollution Control Board, carriage of the various parts of the plant through transporters from Delhi to Aurangabad, payments made by the assessee through banking Channel to M/s Mahindra Engineering Corporation etc. Thus, Ld. CIT(A) has rightly observed that repairs were carried out in the ETP plant by the assessee and the same deserves to be allowed. Hence, the AO was rightly directed to allow the depreciation as claimed by the assessee by the Ld. CIT(A), which does not need any interference on our part, therefore,

we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 02/08/2019.

Sd/-
[DR. B.R.R. KUMAR]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 02/08/2019

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches