

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No. 755/PUN/2019
निर्धारण वर्ष / Assessment Year : 2006-07

W.B. Engineers International Pvt. Ltd., Room No.3, Gram Panchayat At Milkat Prop. No.480, Shikrapur, Tal. Shirur, Pune 412 208 PAN AAACW1016H	Vs.	DCIT (HQ)-IV, Pune
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(Appellant)

(Respondent)

Appellant by	Shri Nikhil Pathak
Respondent by	Smt. Vrandra U. Matkari

Date of hearing	04-02-2020
Date of pronouncement	05-02-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-5, Pune on 30-11-2018 in relation to the assessment year 2006-07.

2. First issue raised in this appeal is a challenge to the initiation of re-assessment proceedings.

3. Briefly stated, the facts of the case are that the assessee filed its return declaring loss of Rs.47,70,227/-, which was

revised to loss of Rs.37.75 lakh. The Assessing Officer (AO) completed the assessment u/s. 143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') vide order dated 30-06-2008. Thereafter, the AO initiated the instant proceedings by means of notice u/s.148 and made the disallowance of the additional depreciation claimed @10% on Stone Crushing equipment acquired during the year amounting to Rs.41,54,127/-. The assessee challenged the order before the Id. CIT(A) but without success.

4. I have heard both the sides and perused the relevant material on record. The first issue is against the initiation of re-assessment proceedings. It is noticed that the original assessment was completed u/s.143(3) of the Act on 30-06-2008. Notice u/s.148 of the Act was issued on 22-03-2013, whose copy has been placed on page 1 of the paper book. Copy of the reasons have been placed at page 3 of the paper book, which read as under :

“As per the provision of section 32(ii) of the IT Act, additional depreciation allowable at specified rate on Plant and Machinery acquired and put to use during the year to an assessee who are engaged in the manufacturing and or processing of an article or thing. Further, it is judicially held in the case of M/s. Behraghat

Mineral Ltd. Vs. CIT (246 ITR 230) that crushing of stone does not tantamount to manufacturing.

The assessee company engaged in the business of trading of spare part of earth moving equipments and during the year started the business of crushing of stone. The assessee company claimed additional depreciation of Rs.41,54,127/- @10% on stone crusher equipments acquired during the year and put to use for less than 180 days during scrutiny assessment the assessing officer allowed the claim. In view of apex court decision regarding crushing of stone does not tantamount to manufacturing processing allowance of additional depreciation is not correct and has resulted in excess allowable of depreciation of Rs.41,54,127/-.

I have reasons to believe that income of Rs.41,54,127/- has escaped assessment. Approval from CIT-IV for reopening the case has been received vide his letter dated 22.3.2013 – Issue notice u/s.148.”

5. It is seen from the above reasons that the entire focus of the AO was to disallow additional depreciation on plant and machinery acquired and put to use during the year *qua* stone crushing facility. First proviso to section 147 provides that where an assessment has been made u/s.143(3) of the Act, then no action shall be taken under this section after the expiry of 4 years from the end of the relevant assessment year unless income chargeable to tax has escaped assessment by reason, *inter alia*, of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment. Instantly,

I am considering the assessment year 2006-07. Original assessment in this case was completed u/s. 143(3) on 30-06-2008. Period of 4 years from the end of the relevant assessment year expired on 31-03-2011. Notice u/s.148 was issued on 22-03-2013, which is obviously after the expiry of 4 years from the end of the relevant assessment year. In such factual background, the re-assessment could have been validly initiated on failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. Now the question arises as to whether the assessee made full and proper disclosure of the claim for additional depreciation?

6. I have gone through the assessee's Annual accounts. Page 33 of the paper book is 'Schedule of fixed assets'. A note has been appended at the foot of such Schedule reading: *'Additional depreciation @ 20% has been claimed u/s.32, 9th proviso'*. It, therefore, shows that the assessee did make a disclosure of the claim of additional depreciation. Not only that, the AO while finalising the assessment, did take note of this fact which is borne out from pages 2 and 3 of the assessment order in which he did not allow travelling expenses

incurred for purchase of new plant and machinery and treated such amount as capital expenditure. He not only allowed depreciation but also additional depreciation on such amount capitalised by noting: *‘However, I allow depreciation u/s.32(1)(ii) at Rs.26,734/- and additional depreciation u/s.32(1)(iia) at Rs.35,642/- on the same’*. It is, therefore, abundantly clear that not only the assessee made disclosure of the claim of additional depreciation in the original return of income but the AO was also conscious of the same fact and did accept/allow such claim. As reasons for the re-assessment are founded only on the question of allowability of claim of the additional depreciation, for which the assessee had made full and true disclosure, I am of the considered opinion, the case is covered by first proviso to section 147. I, therefore, set-aside the initiation of re-assessment proceedings and the consequential assessment order.

7. In view of my decision on the initiation of re-assessment proceedings, there is no need to discuss the merits of the addition which automatically gets allowed due to allowing of

the ground challenging the initiation of re-assessment proceedings.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 05th February, 2020.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 05th February, 2020
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-5, Pune
4. The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “SMC” /
DR ‘SMC’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	04-02-2020	Sr.PS
2.	Draft placed before author	04-02-2020	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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