

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “B”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 20/Chd/2021
(Assessment Year: 2017-18)

M/s. SEL Manufacturing Co. Ltd., 274, G.T. Road, Dhandari Khurd, Ludhiana.	बनाम	Deputy Commissioner of Income Tax, Central Circle-III, Ludhiana.
स्थायी लेखा सं./PAN NO: AAHCS 9189 E		

निर्धारित की ओर से/Assessee by : Shri Ashiwani Kumar, CA
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing: 13.06.2022
उद्घोषणा की तारीख/Date of Pronouncement: 12.07.2022

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), Ludhiana-5 [in short the ‘Ld. CIT(A)’] passed u/s 250(6) of the Income Tax Act, 1961 (in short ‘the Act’) dated 27.01.2021 wherein the assessee has taken the following grounds of appeal :-

1. *“That order passed u/s 250(6) of the Income Tax Act, 1961 by the learned Commissioner of Income Tax (Appeals)-5, Ludhiana is against law and facts on the file in as much as he was not justified to arbitrarily hold that the appellant was entitled to claim depreciation on power plant at written down value method as against claimed by the appellant at straight line method since last more than five years.*
2. *That the learned CIT (A) was not justified to hold that as the appellant was running only a captive power plant so it was not entitled to claim depreciation on straight line method.”*

2. During the course of hearing, the ld. A/R of the assessee submitted that the assessee is a public limited company engaged in the business of manufacturing and trading of yarn, garments, knitted cloth, etc. For the impugned assessment year 2017-18, it filed its return of income on 16.10.2017 declaring loss of Rs. 670,62,44,551/-. Subsequently the assessee company received a defective notice from CPC, Bangalore in respect of proposed adjustment on account of disallowance of depreciation on power plant besides on certain other issues. In response, the assessee submitted that mere non mentioning of nature of business as “Generation of Power” cannot be a reason for disallowance of depreciation under section 32(1)(i) of the Act. However, the said contention was not accepted by the CPC Bangalore and accordingly depreciation claim of assessee on actual cost on straight line method basis was disallowed by the CPC vide intimation dated 07.03.2019.

3. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT (A) and necessary contentions were advanced and submissions were filed. However, the ld. CIT (A) didn't agree to the contentions so advanced by the assessee and vide impugned order dated 27.01.2021 changed the method of depreciation and allowed the same on WDV basis as against claimed by the assessee on Straight Line Method (SLM) under section 32(1)(i) of the Act. Against the said findings and order of the ld. CIT (A), the assessee is in appeal before us.

4. It was submitted that the only observation made by the ld. CIT (A) while adjudicating the appeal was that depreciation on SLM basis is admissible only for undertaking engaged in "generation and generation and distribution of power" as per provisions of section 32(1)(i) of the Act. It was held by the ld. CIT (A) that since the assessee was having only a captive power plant and the power so generated was consumed in various units of appellant's manufacturing business including Tower Unit, Spinning Unit etc., the appellant was not engaged in "generation and generation and distribution of power" and hence not eligible for claiming depreciation on actual cost basis. It was submitted that disallowance made by the ld. CIT (A) is arbitrary and without appreciation of facts and position in law and our reference was

drawn to the provisions of section 32(1)(i) of the Act, which on plain reading makes it amply clear that an undertaking engaged in generation and distribution of power shall be allowed depreciation on such percentage on actual cost basis as per specified rules.

5. It was submitted that the fact that the assessee is engaged in generation of power is not in dispute as even a spot enquiry was conducted to verify that the appellant runs a captive power consumption plant and the law does not prohibit an undertaking which consumes power captively from claiming depreciation as per provisions of section 32(1)(i) of the Act. In this regard, our reference was drawn to the remand report of the AO which was submitted before the ld. CIT (A) which is reproduced in the impugned order at para 3.2 and which reads as under :-

“2. As directed by you in the point no. 1 of the above letter, the Inspector of the office Shri Ramesh Kumar was deputed to conduct the on the spot enquiry regarding the claim of depreciation by the assessee for the power sector unit on ‘Straight line method’ i.e. SLM basis in its ITR for the assessment year 2017-18. The Inspector visited the premises of M/s. SEL Manufacturing Company Limited at 274-Dhandari Khurd, Ludhiana on 27.11.2019 for the on the spot verification”. The Inspector has found that the plant is used to generate electricity which was utilized in the various units of the assessee including towel unit, spinning unit and WTP Plan plant of the assessee (copy enclosed). Thus, it is a captive power plant. Moreover, a comparative chart of the depreciation claimed by the assessee since the installation of the power plant in F.Y. 2011-12 as claimed by assessee as per SLM method and calculation of depreciation as per WDV method was

also obtained which is submitted for your kind perusal (copy enclosed).”

6. It was further submitted that the claim of depreciation as per provisions of section 32(1)(i) as per straight line method on actual cost basis has been consistently allowed in the past as well as in the subsequent assessment years and our reference was drawn to the copy of assessment order for assessment years 2012-13, 13-14, 14-15 and copy of intimation under section 143(1) for assessment year 2015-16 and 2016-17. It was further submitted that even for subsequent assessment year 2019-20, the claim of depreciation on SLM method has been allowed. It was accordingly submitted that this being the 6th year of claim of depreciation on SLM method and whereas in the past and in the subsequent years, the depreciation has been allowed on SLM method and there has been no dispute by the Revenue, following the principle of consistency, the order of the ld. CIT (A) be set aside and the claim of the assessee regarding depreciation on SLM method in respect of its captive power plant be allowed.

7. Per Contra, the ld. CIT D/R relied on the findings of the ld. CIT (A) which are contained in para 4.2 of his order which reads as under:-

“4.2. Ground of Appeal No. 2 relates to disallowance of Rs. 6,31,50,381/- made by the CPC u/s 143(1) out of depreciation claimed by the assessee. It is mentioned by the AR that the appellant was claiming depreciation on his Power Unit since long and further submitted that the depreciation as claimed in the return cannot be denied merely for not mentioning the business as ‘generation of power/energy’ in the column provided for ‘nature of business’. The AR argued that the claim has been duly verified by the Auditors in their Tax Audit Report u/s 44AB of the Income Tax Act, 1961. The AR filed the copies of allowable depreciation as per Auditors for the A.Y. 2016-17 and 2017-18 along with copies of ITRs and ‘Computation of Income’ which were sent to the AO for verification. In the remand report submitted by the AO, it has been verified that the plant is a ‘Captive Power Plant’ which is used to generate electricity which was utilized in the various units of the assessee including Towel Unit, Spinning Unit and WTP Plant of the assessee. Here it is relevant to mention that depreciation on Straight Line Method (on actual cost basis) is admissible only for “undertaking engaged in generation and generation & distribution of power” as per provision of Section 32(1)(i) which for reference is reproduced below :-

“(i) In case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed.”

As per the submission filed on 08.07.2019, it is mentioned under the ‘Brief Facts’ by the AR about the business of the assessee that “The appellant, a limited company, is engaged in

the business of manufacturing and trading of yarn, garments, knitted cloth, etc. etc.”. In the remand report also, it is mentioned by the AO that after the spot enquiry, it was found that the assessee was having only a ‘captive power plant’. Thus, it cannot be said that the assessee was ‘engaged in generation or generation and distribution of power’ making it eligible for claiming depreciation on the ‘actual cost basis’ i.e. on Straight Line Method. After going through the facts of the case, report of the AO and taking into consideration the legal position, the claim of the assessee for depreciation on Straight Line Method on its Power Unit is not found acceptable and the AO is directed to allow the depreciation as per law applicable to the nature of the business of the assessee and at the rates provided in the Rule 5 of the Income Tax Rules, 1962.

Accordingly, this ground of appeal is partly allowed.”

8. Further, on specific query raised by the Bench, it was submitted by the ld CIT/DR that in the past assessment years, the claim of the assessee has been allowed on SLM basis and there is no action initiated under section 263 by the Revenue in respect of said claim of assessee.

9. We have heard the rival submissions and perused the material available on record. The provisions of section 32(1)(i) of the Act provides that an undertaking engaged in generation or generation and distribution of power shall be allowed depreciation on such

percentage on actual cost basis as per specified rules. What is relevant to note that the term used is an “undertaking” and not an “entity” or an “assessee”. Therefore, what is relevant to examine in the instant case is whether the assessee has more than one undertaking and if the answer to the same is in affirmative and whether one of the undertakings is engaged in generation or generation and distribution of power, in that case, the undertaking and in turn the assessee at the entity level shall be eligible for depreciation under SLM basis. As per the Inspector report who has carried out on the spot verification of the assessee’s premises, the assessee has a captive power plant which is used to generate electricity which was utilized in the various units of the assessee including towel unit, spinning unit and WTP Plan plant of the assessee. We therefore find that the undisputed facts are that there are multiple units or undertakings of the assessee company and one of the undertakings is engaged in generation of power and which is captively consumed by other units. There is no bar under law that a captive undertaking is not eligible for deprecation under SLM basis. Further, we note that in the past and subsequent years, the depreciation has been allowed under SLM basis and therefore, we see no rationale and justifiable basis for the ld CIT(A) to disturb the basis of allowing the depreciation under WDV instead

of SLM basis as so claimed and allowed to the assessee over the years where there are no changes in the facts and circumstances of the case. In light of the aforesaid discussion, we hereby set-aside the order of the ld CIT(A) and direct the AO to allow the depreciation on SLM basis as so claimed by the assessee and the ground of appeal is thus allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 12.07.2022.

Sd/-
(**DIVA SINGH**)
न्यायकि सदस्य/Judicial Member
Member

Sd/-
(**VIKRAM SINGH YADAV**)
लेखा सदस्य/Accountant

Dated: 12.07.2022

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,