IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

IT(TP)A No.475/Bang/2020
Assessment year : 2014-15

Bosch Limited, Hosur Road, Adugodi, Bangalore – 560030. **PAN: AAACM 9840P**	Vs.	The Commissioner of Income Tax, LTU, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Percy Pardiwala, Sr. Counsel
Respondent by	:	Dr. Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.07.2022
Date of Pronouncement	:	29.07.2022

O R D E R

Per Padmavathy S., Accountant Member

This appeal by the assessee is against the order of the CIT, LTU, Bangalore passed u/s. 263 of the Income-tax Act, 1961 [the Act] dated 03.02.2020 for the assessment year 2014-15 on the following grounds:-

> "1. That the order of Learned CIT, LTU, Bengaluru is bad in law to the extent challenged herein.

2. Having regard to the fact that the Learned CIT during the proceedings under Section 263 of the Income-tax Act, 1961 ['the Act] has not been able to quantify the alleged excess deduction and has only set aside the Order of Assessing Officer directing the Learned Assessing Officer to examine the deduction afresh, is the learned CIT right in holding that the order of the AO is erroneous.

3. The Learned CIT ought to have accepted the Appellant's contention that as per the budget speech 2013-14 of the Minister of Finance, the objective for which the incentive u/s 32AC was introduced is to "quicken the implementation of the projects" and therefore all the plant and machinery which are installed during FY 2013-14 are eligible for deduction u/s 32AC even if some of those plant and machinery was acquired before 1st April, 2013.

4. The Learned CIT erred in invoking the provisions of section 263 of the Act, since the order passed by the Learned Assessing Officer was made after making due inquires and verification and after relying on the ratio of certain judicial pronouncements and as such there was no error in the order passed by the AO.

5. The Appellant craves leave to add to, amend or alter the ground herein. For these and other grounds that may be urged at the time of hearing, the appellant prays for appropriate relief."

2. The assessee is a limited company engaged in the business of manufacture and sale of automotive components. For the AY 2014-15, the assessee filed a return of income on 29.11.2014 declaring an income of Rs.1136,86,47,150. The case was selected for scrutiny and reference was made to the TPO for computation of ALP of the international transactions the assessee had with its AE. The AO initially passed the draft assessment order incorporating the TP

adjustment along with certain additions in the corporate tax front against which the assessee filed its objections before the DRP. In pursuance of the directions of the DRP, the AO passed the final assessment order u/s. 143(3) r.w.s. 144C of the Act dated 14.2.2018.

3. The CIT issued a show cause notice to the assessee with respect to the claim made by the assessee u/s. 32AC of the Act in respect of investment made in the new plant & machinery amounting to Rs.40,91,35,945. The said amount was arrived at 15% of new assets installed during the AY 2014-15 amounting to Rs.272,75,72,962. Out of the total deduction claimed by the assessee, a sum of Rs.25,88,07,773 is a deduction pertaining to new assets for RS.172,53,85,157 which were acquired prior to 1.4.2013 and installed during the AY 2014-15. The CIT stated that, deduction u/s. 32AC of the Act was not allowable on addition to plant & machinery purchased prior to 1.4.2013 as the provisions of the section requires that new asset should not only be installed during the FY 2013-14, but the same should also be acquired during the FY 2013-14 as the words used in the section are 'acquires and installs". Since according to the CIT the claim u/s. 32AC had wrongly been allowed by the AO on the assets acquired even prior to 1.4.2013, the CIT concluded that the order of the AO u/s. 143(3) is erroneous insofar it is prejudicial to the interests of the revenue. The CIT also held that deduction claimed u/s. 35(2AB) had been wrongly allowed by the AO in his order. However, in this appeal the assessee is contending the revision to the extent of deduction claimed u/s. 32AC of the Act only.

4. The assessee with regard to the deduction u/s. 32AC submitted before the CIT as follows:-

> During the Scrutiny assessment proceedings, the AO specifically examined this issue as to why deduction u/s 32AC should be granted in respect of Assets acquired prior to 01.04.2013 but installed in current FY 2013-14(AY 2014-15). The company furnished detailed submissions to the AO vide letter dt. 14.09.2015 which is extracted below.
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> "Deduction in respect of investment in new plant and machinery u/s 32AC of the Income-tax Act:
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> i) In the return of income filled for FY 2013-14 (AY 2014-15) we have claimed deduction in respect of investment in new plant and machinery u/s 32AC amounting to Rs. 409,135,945, The said sum has been arrived at 15% of new assets installed during FY 2013-14 amounting to Rs. 2,727,572,968.
>
> ii) The cost of such new assets includes Rs. 1,725,385,157 being the assets procured prior 31.03.2013 but installed in FY 2013-14. We submit that the deduction u/s 32AC is available even in respect of the above said category of the assets which is duly supported by the objective behind introducing the said incentive. As per the budget 2013-14 speech of the Minister of Finance, the objective for which the incentive u/s 32AC was introduced is to "quicken the implementation of the projects". Further, the plant and machinery which are in capital work-in-progress become 'new assets installed' as and when such plant and machinery are installed and put to use which might happen in subsequent year/s. Hence, we submit that the deduction u/s 32AC is applicable on all the assets which are installed during the year even if they are procured in the previous year.
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> iii) In this connection, we draw your attention to the decision of Delhi Tribunal in the case of DCIT Vs. Cosmo Films Ltd. (2012) 13 ITR (Trib) 340. In that case, the Hon'ble Tribunal was dealing with the issue of allowability of balance additional depreciation u/s 32(1)(iia) in the second year in respect of assets acquired and installed in latter half of the first

year of acquisition. While on this, we wish to submit that Sec 32(1)(iia) grants additional depreciation in respect of assets acquired and installed during the relevant previous year. Having regard to the language contained therein, in that case, the AO denied additional depreciation in the second year on the ground that the assets are not acquired and installed during the current year. In this context, the Hon'ble Tribunal after considering the provisions of section 32(1)(iia) of the Act allowed the claim of the assessee in the second year, despite the fact that in the literal sense, the assets were not acquired and installed during that year. In rendering the above decision, the Hon'ble Delhi Tribunal relied on the decision of the Hon'ble Supreme Court's in Bajaj Tempo Ltd. v. CIT (1992) 1961TR 188 (SC) wherein the Supreme Court observed that incentive provisions have to be construed reasonably, liberally and purposive to make the provision meaningful while granting the additional allowance.

We now submit that the language contained in both Sec 32AC as well as Sec 32(1)(iia) are similar viz., "acquires and installs/acquired and installed". In view of above, drawing strength from the above judgment, as stated supra in Para 2, the intent of provisions of Sec 32AC being to boost/speed up the Industrial development and growth of the economy, the provisions of the said Sec 32AC ought to be given a liberal and purposive interpretation and hence, the assessee submits that assets installed during FY 2013-14, although purchased during FY 2012-13 should be eligible for deduction u/s 32AC.

iv) The Company also places reliance on the following case laws wherein the Hon'ble Supreme Court has insisted on a liberal and purposive interpretation of sections granting incentives to the assesses:

- Bajaj Tempo Ltd. v. CIT, 196 1TR 188 (SC)
- CIT vs. U. P. Cooperative Fedn. Ltd. 176 ITR 435 (SC.)
- CIT v. Strawboard Manufacturing Co. Ltd. 177 1TR 431 (SC)
- K. P. Varghese v. ITO, 131 ITR 597 (SC)

> v) In view of above, the company has claimed a deduction of Rs. 409,135,945 as deduction u/s 32AC which includes a sum of Rs. 258,807,773 being the deduction pertaining to new assets installed during FY 2013-14 but acquired before 01.04.2013.
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> From the above, it is clear that the AO has not granted deduction u/s 32AC in respect of assets acquired in earlier year without application of mind. But the AO has thoroughly examined the issue on hand and has satisfied himself about the correctness of the claim. He examined the claim with reference to the ratio of various judicial pronouncements referred above and thereafter came to the conclusion that the deduction claimed is proper and then he allowed the deduction. Therefore, we respectfully submit that there is no error in the order passed by the AO by granting deduction u/s 32AC in respect of the assets acquired prior to 01.04.2013 but installed after 01.04.2013. Hence we object your proposal.

5. The assessee submitted that the deduction u/s. 32AC has been allowed by the AO after examining the details submitted by the assessee and after application of his mind. The assessee also submitted that the AO has accepted the contention of the assessee with regard to the words "acquires and installs" contained in section 32AC and is similar to the wordings "acquired and installed" in section 32(1)(iia) and therefore the decisions rendered in the context of section 32(1)(iia) would be applicable for deduction u/s.32AC also. The AO after considering the various judicial pronouncements has allowed the deduction u/s. 32AC of the Act. The contention of the CIT that the decisions rendered for allowability of additional depreciation u/s. 32(1)(iia) is not applicable to 35AC is a debatable issue and that when two views are possible, the action of the CIT to revise the order u/s. 263 is not tenable. In this regard, the assessee relied on the decision of

the Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66 (SC).*

6. The CIT rejected the contentions of the assessee by stating that –

> "4.5 So even if the contention of the assessee that the words 'acquired and installed' as used in Section 32(1)(iia) of the Act and the words 'acquires and installs' as appearing in the Section 32AC of the Act are required to be interpreted in a similar manner is accepted, only one interpretation could be there i.e. the assets needed to be both acquired and installed in FY 2013-14 to be eligible for deduction in AY 2014-15 and the assets acquired prior to 01.04.2013 would not be eligible for deduction under Section 32AC of the Act. There is nothing to suggest that two possible views could be there and the AO has adopted one such possible view permissible in law. Since the view taken by the AO is unsustainable in law, as such the view of the AO was erroneous and the same has caused prejudice to the revenue.
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> 4.6 The other argument of the appellant that the incentive provisions have to be interpreted liberally, the same is also devoid of any merit. In the case of Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC) the Hon'ble Apex Court has held that there is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation. The intention of the legislature is primarily to be gathered from the words used in the statute. Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however, great the hardship may appear to be.
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> 4.7 Further, in the case of Commissioner of Customs (Import), Mumbai vs M/S Dilip Kumar and Company & Or in Civil Appeal No.3327 of 2007, dt July 30, 2018, (2018-TIOL-302-SC-Cus-CB) while discussing the issue of interpretation of exemption provisions, the Constitution Bench of the Hon'ble Supreme Court held that a provision giving benefit to the assessee needs to be interpreted strictly and in case there is an ambiguity in the provision, which is subject to strict interpretation, the benefit of such ambiguity cannot

be claimed by the assessee and it must be interpreted in favour of the revenue. While doing so the SC overruled the ratio laid down in the decision in the case of Sun Export Corporation, Bombay v. Collector of Customs, Bombay, (1997) 6 SCC 564 and upheld the ratio laid down in Mangalore Chemicals & Fertilizers Ltd. vs Dy Commissioner of Commercial Taxes, (1992) Supp 1 SCC 21, which had already been approved by a three Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606. In this case the three Judge Bench had held as follows:

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals -and in Union of India v. Wood Papers, referred to therein -represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee -- assuming that the said principle is good and sound ¬does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

4.8 So in view of the above binding decision of the Hon'ble Supreme Court, the provision giving a benefit to the assessee needs to be interpreted strictly and in case of doubt the benefit would go to the revenue. The above decision of the SC was also considered by jurisdictional ITAT in the case of Parswanath Padmarajaiah Jain v. Assistant Commissioner of Income-tax, Circle-1(1)(1), Bengaluru[2019] 102 taxmann.com 92 (Bengaluru Trib) and the ITAT had dismissed the appeal of the assessee."

7. Aggrieved by the order of the CIT, the assessee is in appeal before the Tribunal.

8. During the course of hearing, the ld. AR reiterated the submissions made before the CIT. He also drew our attention to the submissions made before the AO with regard to the deduction claimed u/s. 32AC **(at page 161 of PB)** to substantiate that the AO has

conducted a proper enquiry of the deduction claimed and has allowed the same accepting the submissions of the assessee. With regard to the contention of the CIT that the view taken by the AO on allowability of assessee's claim u/s.32AC is unsustainable in law the ld. AR made a very detailed argument with regard to the merits of the case stating that the ratio laid down in the judicial pronouncements relied on by the assessee in the context of section 32(1)(iia) of the Act is clearly applicable to section 32AC also since the wordings used in both the sections are same i.e., "acquires and installs / acquired and installed". The ld. AR submitted that various High Courts and Tribunals have been consistently holding that the sections which are introduced to encourage the industries to promote socio-economic growth should be interpreted reasonably and purposively and not strictly by a literal reading. In this regard, he relied on the following decisions:-

- Ananda Bazar Patrika Pvt. Ltd. v. ACIT, ITA No.1121/Kol/2007 dated 9.8.2009 (Kolkatta Trib.)
- JCIT v. Lotus Energy (India) Ltd., 68 taxmann.com 364 (Mum. Trib.)
- Kokuyo Camlin Ltd. v. ACIT, ITA No.5443/Mum/2018 dated 22.4.2021 (Mum. Trib.)
- DCIT v. Cosmo Films Ltd., 24 taxmann.com 189 (Del)
- National Aluminium Co. v. CIT, 139 taxmann.com 552 (Orissa)
- Ishwar Singh Bindra & Ors. v. State of UP, (1969) AIR (SC) 1450 (FB)
- Mazagaon Dock Ltd. v. CIT, (1958) AIR 861
- M.R. Shah v. IDMC Ltd. 78 taxmann.com 285 (Guj)

9. The ld. DR submitted that section 32AC is a new section and hence there is no judicial precedent directly. Provisions of section 32AC are clearly states that the deduction is available only for plant & machinery acquired and installed on or after 1.4.2013. The intention of the statutory provisions should be understood in the direct sense and it cannot be interpreted differently. This being the first year of claim of the assessee, the AO should have looked into the details on the basis of which the assessee had claimed the deduction and should have allowed the deduction in accordance with law. The ld DR therefore supported the order of the CIT.

10. We have considered the rival submissions and perused the material on record. We notice that the assessee has made submissions before the AO stating that deduction u/s.32AC is allowable even for assets acquired prior to 01.04.2013 but installed during the financial year 2013-14 would be eligible for deduction by relying on various decisions rendered in the context of 32(1)(iia). Though there is no specific mention in AO's order regarding the submissions made and basis of allowing the deduction, the facts of the case is that the assessee did make the submissions and the AO has taken the view that the assessee is eligible for deduction u/s.32AC. Section 32AC is a new provision inserted by the Finance Act 2013 and there is no direct judicial precedence to interpret the words used in the section "acquires and installs". There are plethora of decisions that for the purpose of 32(1)(iia), the additional depreciation is allowable even for assets acquired prior to 31/03/2005 provided the installation of such assets is

after 31/03/2005. Since the wordings used in section 32(1)(iia) and 32AC are similar whether the ratio of decisions rendered in the context of 32(1)(iia) is applicable for 32AC is a debatable issue where contrary views can be taken. What is prejudicial to the interest of the Revenue is explained in the judgment of the Hon'ble Supreme Court in the case of *Malabar Industries Co Ltd v. CIT [2000] 243 ITR 83 (SC)* (head note):

> "The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or **where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.**"

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd. [2007] 295 ITR 282* (SC).

11. In assessee's case while interpreting the wordings "acquires and installs" in section 32AC, the AO has taken one view in allowing the deduction based on the submissions of the assessee of various judicial pronouncements rendered in the context of 32(1)(iia); whereas the CIT is not in agreement with the view based on the plain reading of section 32AC. The decision of the AO to allow deduction u/s.32AC cannot be stated as unsustainable in law as he has taken a possible view based on

application of mind. The CIT has not brought any material on record to show that the view taken is contrary to law. In the light of these discussions and placing reliance on the decision of Hon'ble Supreme Court cited *supra*, we are of the considered view that the CIT is not justified in setting aside the order of the AO. Accordingly the directions of the PCIT are quashed.

12. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 29th day of July, 2022.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(PADMAVATHY S.)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 29th July, 2022.

/*Desai S Murthy* /

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.