

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

BEFORE

**SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 448/Del/2019
Assessment Year: 2015-16

DCIT, Circle 11(1), New Delhi	Vs.	Haldiram Snacks Pvt. Ltd., H-3, Mohan Co-Operative Industrial Estate, Main Mathura Road, New Delhi-110 044
(Appellant)		(Respondent)

Department by:	Shri Anuj Garg, Sr. DR
Assessee by:	Shri Ajay Wadhwa, Advocate, Ms. Bharti Sharma, Advocate
Date of Hearing:	05.07.2022
Date of pronouncement	23.08.2022

ORDER

PER ASTHA CHANDRA

The appeal of the Revenue is directed against the order dated 16.10.2018 of the Ld. Commissioner of Income Tax (Appeals)-4, New Delhi ("**CIT(A)**") pertaining to the assessment year ("**AY**") 2015-16.

2. The assessee is a company engaged in the business of manufacturing of sweets, namkeens and running of restaurants. It filed its return on 30.11.2015 for AY 2015-16 declaring income of Rs. 1,80,24,57,600/-. The case was selected for scrutiny. During assessment proceedings the Ld. Assessing Officer ("**AO**") found that the assessee has claimed depreciation of

Rs. 1,46,75,508/- @ 10% on account of plant & machinery installed during the previous AY. Since the assessee had purchased these assets after 01.10.2013, it claimed 50% of normal depreciation and 50% on these assets in the immediate preceding AY. The Ld. AO required the assessee to justify why additional depreciation @10% in AY 2015-16 has been claimed when the new plant and machinery was neither purchased nor installed during the year. The assessee replied vide letter dated 11.12.2017 saying that during the year, the assessee has claimed balance additional depreciation of Rs. 1,46,75,508/- @ 10% on plant and machinery installed during the last Financial Year (“FY”) 2013-14 between 1st October, 2013 to 31st March, 2014. Because during the previous year, the assessee has claimed only 50% of the additional depreciation, the assessee has claimed the balance additional depreciation of 10% during the current year. The assessee relied on the following decisions:-

- (i) DCIT vs. Cosmo Films Ltd. 13 ITR (T) 340 (Delhi)
- (ii) ACIT vs. SIL Investment Ltd. (2012) 54 SOT 54 (Delhi)
- (iii) MITC Rolling Mills P Ltd. vs. ACIT ITA No. 2789/MUM/2012

3. The explanation of the assessee was not acceptable to the Ld. AO. According to him, before amendment from 1st April, 2016 the claim of the assessee on additional depreciation on plant and machinery purchased in AY 2014-15 of Rs. 1,46,75,508/- is not allowable at all as per existing provisions of law. He therefore made the impugned disallowance.

4. The assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the impugned disallowance of additional depreciation by observing as under:-

“5.2. Examination of the issue and decision:

5.2.1 I have perused the assessment order as well as written and oral arguments put forward by the AR of the appellant company during the instant proceeding. I 'ave also gone through case laws relied upon by the appellant.

5.2.2 *The AO in the assessment order stated that there is no provision in the Act and nor Section 32(i)(iia) of the Act provides for claiming the balance additional Depreciation in second year of installation of machinery.*

5.2.3 *In terms of the facts of the matter, the appellant company has purchased certain machinery in the FY 2013-14 in the last half of the year. Since the plant and machinery was installed and used for less than 180 days, the appellant claimed additional depreciation at the rate of 10% instead of 20% in immediately preceding assessment year. In the instant FY relevant to the captioned assessment year, the appellant claimed the balance 10% of the additional depreciation amounting to Rs. 1,46,75,508/-.*

5.2.4 *I have considered the observations of the AO and the submissions of the appellant and the position of law. In terms of the provisions of the Act as interpreted by the Hon'ble Courts from time to time, the additional depreciation, if claimed at the rate of 10% in one year, being the machinery installed for less than 180 days, the balance 10% of the additional depreciation can be claimed in the next year. Reliance in this regard is placed on following judicial*

- *Commissioner of Income-tax, Madurai v. Shri T.P. Textiles (P.) Ltd[2017] 79 taxmann.com 411 (High Court Of Madras)*
- *Commissioner of Income-tax, Bangalore v. Rittal India (P.) Ltd.[2016] 380 ITR 0428 (High Court of Karnataka)*
- *Dy. CIT v. Cosmo Films Ltd. [2012] 13 ITR (T) 340 (Delhi).*
- *MITC Rolling Mills P. Ltd. vs. ACIT 10(2), ITAT Mumbai, ITA No.2789/Mum/2012*
- *ACIT v. SIL Investment Ltd. [2012] 73 DTR 233 (Del.)(Trib.)*

5.2.5 *Thus, in view of the legal position as interpreted by the Hon'ble Courts from Time to time and particularly in view of the observation of **Hon'ble Madras High Court in CIT vs. T.P. Textiles** (supra), the claim of the appellant with regard to the balance additional depreciation of machinery installed in preceding year is allowed. Addition amounting to Rs. 1,46,75,508/- on account of disallowance of additional depreciation is deleted. The ground of appeal is allowed."*

5. Aggrieved, the Revenue is in appeal before the Tribunal. Ground No. 1 and 1a) relate thereto.

6. The Ld. DR submitted that the Ld. CIT(A) erred in allowing carry forward of additional depreciation. There cannot be any carried forward additional depreciation to be allowed in subsequent year. The second proviso to section 32(1)(ii) of the Income Tax Act, 1961 (**the "Act"**) restricts such allowances. The Ld. AR refuted the above submission of the Ld. DR and submitted that second proviso to section 32(1) provides that where in a previous year an asset is acquired and put to use for the purposes of

business or profession for less than 180 days, depreciation thereon shall be allowed at 50% of the depreciation allowable according to the percentage prescribed in respect of the block of assets comprising such asset. As regards the balance amount, the same is allowable in next succeeding year. This has now been statutorily recognized by insertion of a further proviso by the Finance Act, 2015 w.e.f. 01.04.2016. The Ld. AR submitted that the said amendment is clarificatory in nature. As regards the additional depreciation the Ld. AR relying on the decision of Delhi Tribunal in Cosmo Films Ltd. (supra) submitted that where the plant and machinery entitled to additional depreciation is acquired during the second half of the year, the assessee is entitled to only 50% during the year and balance is allowable in next year. He also placed reliance on the decision of Madras High Court in CIT vs. Shri T.P. Textiles (P.) Ltd.(2017) 394 ITR 483 (Mad).

7. We have carefully considered the rival submissions, perused the legal position involved and the material available in the records. The issue for consideration in this case is whether additional depreciation if claimed @ 10% in one year, being the plant and machinery installed and put to use for the purposes of business for a period of less than 180 days, the balance 10% of the additional depreciation can be claimed in the succeeding year or not. It is undisputed legal position that additional depreciation of 20% of the cost of new plant and machinery acquired and installed is allowable under section 32(1)(iia) of the Act to an assessee engaged in the business of manufacture or production of any article or thing over and above the general depreciation allowance. In a case where the assessee claimed only 50% of the depreciation under second proviso to section 32(1)(ii) in the year in which the plant and machinery was acquired and put to use for less than 180 days, and the assessee is eligible to claim additional depreciation of 20% on said plant and machinery under section 32(1)(iia) and the assessee claimed only 10% of 20% in the preceding AY as plant and machinery was put to use in the second half of the year, can the balance additional depreciation of 10% be claimed by the assessee in succeeding AY. In such a

scenario the revenue has been declining the assessee's claim. This is what has happened in the case of the assessee presently under our consideration.

7.1 An identical issue came up for consideration before Delhi Bench of Tribunal in Cosmo Films Ltd. (Supra). In this case the AY involved was 2004-05. The Tribunal in para 17 of its order observed and held as under:-

"17..... this clause was inserted to provide incentives for fresh investment in industrial sector. This clause was intended to give impetus to new investment in setting up a new industrial unit or for expanding the installed capacity of existing units by at least 25%. Thereafter these provisions were amended by the Finance (No. 2) Act of 2004 w.e.f. 1.4.2005 and provided that in the case of any machinery or plant which has been acquired after the 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 15% of actual cost of such machinery or plant shall be allowed as deduction under clause (ii) of section 32(1). This additional allowance u/s 32(1)(iia) is made available as certain percentage of actual cost of new machinery and plant acquired and installed. This provision has been directed towards encouraging industrialization by allowing additional benefit to the setting up new industrial undertakings making or for expansion of the industrial undertaking by way of making more investment in capital goods, Thus, these are incentives aimed to boost new investments in setting up and expanding the units. The proviso to section 32(1)(iia) restricts the benefit in respect of following

"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 guesh house; or*
- (C) any office appliances or road transport vehicles; 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;"*

Thus, this incentive in the form of additional sum of depreciation available to any plant or machinery which has been used either within India or outside India by any other person or such machinery and plant are installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house or any office appliances or road transport vehicles, or any machinery or plant, the whole of the actual cost of which is allowable as deduction (where by way of depreciation or otherwise) in computing the total income under the head "Profits and gains of business or profession" of any one previous year. Thus, the intention was not to deny the benefit to the assets who have acquired or installed new machinery or plant. The second proviso to section 32(1)(ii) restricts the allowances only to 50% where the assets have been acquired and put to use for a period

less than 180 days in the year of acquisition. This restriction is only on the basis of period of use. There is no restriction that balance of one time incentive in the form of additional sum of depreciation shall not be available in the subsequent year. Section 32(2) provides for a carry forward set up of unabsorbed depreciation. This additional benefit in the form of additional allowance u/s 32(1) (iia) is one time benefit to encourage the industrialization and in view of the decision of Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. {supra}, the provisions related to it have to be constructed reasonably, Liberally and purposive to make the provision meaningful while granting the additional allowance. This additional benefit is to give impetus to industrialization and the basic intention and purpose of these provisions can be reasonably and liberally held that the assessee deserves to get the benefit in full when there is no restriction in the statute to deny the benefit of balance on 50% when the new plant and machinery were acquired and use for less than 180 days. One time benefit extended to assessee has been earned in the year of acquisition of new plant and machinery. It has been calculated @ 15% but restricted to 50% only on account of usage of these plant & machinery in the year of acquisition. In section 32(1)(iia), the expression used is "shall be allowed". Thus, the assessee had earned the benefit as soon as he had purchased the new plant and machinery in full but it is restricted to 50% in that particular year on account of period of usages. Such restrictions cannot divest the statutory right. Law does not prohibit that balance 50% will not be allowed in succeeding year. The extra depreciation allowable u/s 32(1)(iia) in an extra incentive which has been earned and calculated in the year of acquisition but restricted for that year to 50% on account of usage. The so earned incentive must be made available in the subsequent year. The overall deduction of depreciation u/s 32 shall definitely not exceed the total cost of plant and machinery."

7.2 In CIT vs. Rittal India (P) Ltd. (2016) 380 ITR 423 (Kar) the facts were that the assessee, an existing industrial undertaking acquired and installed new plant and machinery after 01.10.2006 and before 31.03.2007. As new machinery was put to use for business purposes for period of less than 180 days in AY 2007-08, the assessee claimed 50% of additional 20% depreciation (i.e. 10% additional depreciation) under section 32(1)(iia) in AY 2007-08 and allowance of balance 10% depreciation in AY 2008-09. The Ld. AO allowed claim of allowance of 10% depreciation under section 32(1)(iia) in AY 2007-08 but disallowed balance 10% depreciation in AY 2008-09. On these facts, the Hon'ble Karnataka High Court held as under:-

"7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.

8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been

done away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. *The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed."*

7.3 The Hon'ble Madras High Court in CIT vs. Shri T.P. Textile (P) Ltd. (2017) 394 ITR 483 (Mad) has agreed with the view taken by the Hon'ble Karnataka High Court in Rittal India (P) Ltd. (supra).

7.4 The Ld. CIT(A) has followed the decisions (supra) in coming to the conclusion that the impugned disallowance made by the Ld. AO is unsustainable. We, therefore endorse the view of the Ld. CIT(A). Accordingly, the appeal of the Revenue is dismissed.

8. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 23rd August, 2022.

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 23/08/2022

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ASSISTANT REGISTRAR
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