IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCE)

ITA No.2419/Del./2018
(Assessment Year : 2015-16)

ACIT, Central Circle 29, New Delhi.	vs.	M/s. Abhisar Buildwell (P) Ltd., 1711, S.P. Mukherjee Marg, Delhi – 110 006.
		(PAN : AAFCA6845D)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Satyajeet Goel, Advocate
REVENUE BY : Shri Rajesh Kumar, Senior DR

Date of Hearing : 26.08.2021
Date of Order : 15.09.2021

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle 29, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 31.01.2018 passed by the Commissioner of Income-tax (Appeals)-30, New Delhi qua the assessment year 2015-16 on the grounds inter alia that :-

> **"1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition of Rs.3,54,59,399/- made on account of disallowance of depreciation u/s 32(1) r.w.s. 43(1) of the Act.**

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that excise refund being revenue receipt cannot be reduced from the cost of plant & machinery.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying upon the Hon'ble Supreme Court decision in the case of CIT vs. Meghalya Steel Ltd. wherein it was held that excise duty refund is a revenue receipt forming part of profits and gains, arising from business while dealing with deduction claimed u/s 80IBIIC of the Act whereas the issue under consideration is claim of depreciation in a situation in which the deferred government grants have been utilized by the demerged company in a direct manner in pursuance of notification issued under Central Excise Act, 1944.

4. That the grounds of appeal are without prejudice to each other."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company came into existence pursuant to a scheme of demerger approved by Hon'ble Delhi High Court vide order dated 11.09.2007 as a result of demerger of latex rubber thread unit of M/s. Dharampal Satyapal Ltd. having its manufacturing unit at Agartala. Assessee company by filing return of income for the year under assessment declared a net loss of Rs.13,43,34,403/- and has claimed depreciation amounting to Rs.2,82,24,375/-. Assessing Officer (AO) noticed from the depreciation chart and auditor's report prepared as per provisions contained u/s 44AB of the Income-tax Act, 1961 (for short 'the Act') that depreciation has been claimed in respect of various block of assets consisting of building (factory), furniture & fixtures

and plant & machinery. AO further noticed that assets on which depreciation has been claimed by the assessee company has been acquired out of Government grants (excise duty exemptions) obtained by the demerged company. Since the entire cost for assets has been borne by the Central Government, the actual cost of assets in accordance with the provisions of section 43(1) of the Act shall be nil. Declining the contentions raised by the assessee company that it has acquired the assets in the scheme of demerger approved by Hon'ble Delhi High Court and no part of cost of assets has been borne by the Government, AO proceeded to hold that the assets were acquired by demerged company out of the amount of excise duty exemptions which has been classified by the demerged company in its books of accounts as deferred Government grants and thereby reduced the cost of assets by an amount of Rs.78,32,12,592/- and consequently claim of depreciation has been recomputed by reducing the actual cost of assets by an amount of Rs.78,32,12,592/-. Accordingly, depreciation of plant & machinery amounting to Rs.20,37,338/- is allowed and the balance depreciation amounting to Rs.3,54,59,399 is disallowed and made addition thereof to the total income of the assessee.

3. Assessee carried the matter before the ld. CIT (A) by way of filing appeal who has deleted the addition by accepting the appeal of the assessee. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. DR for the Revenue challenging the impugned order passed by the ld. CIT (A) referred to paras 16 & 17 of the assessment order that *"when the assets were acquired by the demerged company out of amount of excise duty exemptions which has been classified by the demerged company in its books of accounts as deferred Government grants, the actual cost of assets to the assessee company shall be reduced by the amount of deferred Government grants utilized for acquisition of such assets whether by the demerged company or by the resulting company*" and as such, AO has not reduced the cost during the year under consideration.

6. However, on the other hand, ld. AR for the assessee to repel the contentions raised by the ld. DR contended that the issue in question is covered in favour of the assessee in its own case

decided by the **coordinate Bench of the Tribunal in Assessment Years 2010-11, 2011-12 and 2012-13 & 2013-14 in ITA Nos.4990/Del/2014, 823/Del/2015, and 5129 & 5130/Del/2016** respectively.

7. At the same time, ld. DR for the Revenue has failed to bring on record distinguishable facts, if any, qua the year under assessment vis-à-vis earlier years.

8. Ld. CIT (A) by following earlier year order passed by his predecessor for AY 2012-13 and 2013-14, subsequently confirmed by the Tribunal, deleted the disallowance made on account of depreciation claimed by the assessee by returning following findings :-

> **" The appellant has further submitted that on the same issue of disallowance of depreciation, additions have been made in the assessment order passed for A. Y.2012-13 and A Y.2013-14, and the same has been deleted by me vide order dated 15.07.2016 in Appeal no. 328/15-16/2305 and 70/16-17/2504 and on this ground also, the appellant has submitted that the additions made on account of disallowance of depreciation, should be deleted.**
>
> **From the above, following facts emerged:**
>
> - **The excise duty refund is given to the appellant on account of the manufacturing activities carried out in the notified area, upon fulfillment of certain conditions; and**
> - **The Excise duty refund, is derived from the manufacturing activities and purchasing the assets from this excise duty refund on fulfillment of certain conditions, is nothing, but application of profits,**
> - **The excise duty refund is of the nature of revenue receipt, forming part of Profits and Gains, arising from business.**

> **The same is a revenue receipt, as has been held by Hon'ble Supreme Court, in the case of Commissioner of Income Tax Vs. Meghalaya Steels Ltd. [2016J 383 ITR 217 (SC) and therefore, this excise refund, being a revenue receipt, cannot be reduced from the cost of Plant & Machinery.**
>
> **From the above, it is clear that the Excise duty refund, is a revenue receipt, forming part of total taxable income and therefore, same cannot be reduced from the block of assets, in order to determine the actual cost of assets.**
>
> **In view of the above facts and circumstances, I am of the considered opinion that Excise duty refund, is not in the form of capital subsidy or grant, which can be reduced from the cost of assets. Therefore, I agree with the argument of the appellant and in facts and circumstances as discussed above, with due respect, I differ from the findings of Ld. CIT(A) in the earlier Assessment years i.e. for A Y. 2007-08 to A Y.2011-12 on the same issue and also, in view of the ratio laid down by Hon'ble Supreme Court, in the above referred case and the order dated 15.07.2016 passed by me for the preceding assessment years i.e. A Y.2012-13 and A Y.2013-14 vide Appeal no. 328/15-16/2305 and 70/16-17/2504 respectively. Accordingly, findings of the AO are erroneous and therefore, disallowance of Rs.4, 12, 17,481/ - is deleted.**
>
> **Accordingly, all the grounds are hereby allowed."**

9. We have perused the order passed by the ld. CIT (A) and order passed by the **coordinate Bench of the Tribunal in ITA No.4990/Del/2014 for AY 2010-11** which is on identical facts, operative part of which is extracted for ready perusal as under :-

> ***"9. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of the assessee's appeal in ITA No.823/Del/2015 for the assessment year 2011-12 wherein vide order dated 17.09.2018, the relevant findings have been given in paras 6 to 14 which read as under:***
>
> > ***"6. Undisputedly, flexible packaging unit of M/s. Dharampal Satyapal Ltd. was demerged into the assessee company. The Id. AR for the assessee contended that no portion of cost of asset acquired by the assessee company***

was met out of the grant or subsidy or reimbursement of the Government or any other person rather cost of the assets in the hands of assessee company are as per demerger scheme approved and as such, there is no question of reducing the cost of asset and depreciation.

7. However, the AO as well as Id. CIT (A) by invoking the Explanation 7 to section 43 (1) of the Act proceeded to hold that the actual cost of the asset to the assessee company which is a resulting company shall be the same which was to be demerged company and thereby recomputed the claim of deprecation u/s 32 (1) of the Act by reducing the actual cost of asset by Rs.78,32,12,592/-.

8. Ld. AR for the assessee by relying upon CBDT Circular No.37/2016 dated 02.11.2016 contended that benefit of deduction u/s 80IC is admissible on profits enhanced by disallowance made u/s 32 of the Act which makes the claim of depreciation as revenue neutral and further contended that the assessee is entitled to claim benefit of statutory deductions u/s 80IC on additional income arising from disallowance of claim of depreciation.

9. On the other hand, Id. DR also by relying upon Explanation 7 & 10 to section 43 (1) contended that the actual cost of resulting company shall also be nil and as such, actual cost of asset is to be reduced by the amount of Rs.78,32,12,592/-. The ld. DR further contended that the excise duty is reimbursement to the assessee.

10. In the backdrop of the aforesaid facts and circumstances of the case and arguments addressed by the ld. AR of the parties to the appeal, the first question arises for determination in this case is:-

> ***"as to whether the assessee is entitled to claim benefit of statutory deduction u/s 80IC of the Act on additional income arising from disallowance of claim of depreciation and that the benefit of deduction u/s 80IC is admissible on profits enhanced by the disallowance made u/s 32 or that the claim of depreciation is revenue neutral?"***

11. Before proceeding further, the relevant para of Circular No.37/2016 dated 02.11.2016 issued by the CBDT, relied upon by the ld. AR for the assessee, is extracted as under:-

> ***"Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia),40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.***
>
> ***3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia),40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.***
>
> ***4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn / not pressed upon. The above may be brought to the notice of all concerned."***

12. Bare perusal of the operative part of the Circular(supra)goes to prove that disallowance made by the assessee u/s 32 of the Act relating to business activity against which deductions have been claimed under Chapter VI-A, as in the instant case, results in enhancement of the profits of the eligible business and that deduction under Chapter VI-A is admissible on profits so enhanced by the disallowance. In these circumstances, the claim of depreciation made by the assessee company of Rs.6,40,38,391/- is allowable deduction and as such, the benefit of deduction u/s 80IC is allowable on profits enhanced by the disallowance made u/s 32 of the Act and in these circumstances, the claim of depreciation is revenue neutral.

13. So far as question of treating the refund of excise duty as part of the cost is concerned, it is the case of the assessee that the entire cost has been paid by the assessee

> ***for plant & machinery and as such, it cannot be reduced from the cost of asset. Ld. AR for the assessee relied upon order passed by CIT (A) dated15.07.2016 in assessee's own case for AYs 2012-13 & 2013-14 where in excise duty refund has not been treated in the form of capital subsidy or grant which can be reduced from the cost of assets.***
>
> ***14. Since findings returned by the ld. CIT (A) are based upon the decision rendered by Hon'ble Apex Court in CIT vs. Meghalaya Steels Ltd. – (2016) 383 ITR 217 (SC), we are of the considered view that the excise refund is in the nature of revenue receipt forming part of profits and gains arising from the business and as such cannot be reduced from the cost of plant & machinery. So, the findings returned by ld. CIT (A) on this issue are confirmed.***
>
> ***14. In view of what has been discussed above, we are of the considered view that AO as well as CIT (A) have erred in making addition of Rs.6,40,38,391/- by disallowing the claim of depreciation of the asset made u/s 32 of the Act which would further entitle to the assessee the benefit of deduction u/s 80IC on profits enhanced by such disallowances made u/s 32 of the Act.***
>
> ***Consequently, appeal filed by the assessee is partly allowed."***

So, respectfully following the aforesaid referred to order dated 17.09.2018 in assessee's own case, the issue under consideration is decided in assessee's favour."

10. Furthermore, **coordinate Bench of the Tribunal in ITA No.823/Del/2015 for AY 2011-12 vide order dated 17.09.2018** also decided the identical issue in favour of the assessee by determining following findings :-

> ***"10. In the backdrop of the aforesaid facts and circumstances of the case and arguments addressed by the ld. AR of the parties to the appeal, the first question arises for determination in this case is:-***
>
> ***"as to whether the assessee is entitled to claim benefit of statutory deduction u/s 80IC of the Act on additional income arising from disallowance of claim of depreciation and that the benefit of deduction u/s 80IC is***

admissible on profits enhanced by the disallowance made u/s 32 or that the claim of depreciation is revenue neutral?"

11. Before proceeding further, the relevant para of Circular No.37/2016 dated 02.11.2016 issued by the CBDT, relied upon by the ld. AR for the assessee, is extracted as under :-

> ***" Chapter VI-A of the Income-tax Act, 1961 (''the Act''), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.***
>
> ***…..***
>
> ***3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.***
>
> ***4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn / not pressed upon. The above may be brought to the notice of all concerned."***

12. Bare perusal of the operative part of the Circular (supra) goes to prove that disallowance made by the assessee u/s 32 of the Act relating to business activity against which deductions have been claimed under Chapter VI-A, as in the instant case, results in enhancement of the profits of the eligible business and that deduction under Chapter VI-A is admissible on profits so enhanced by the disallowance. In these circumstances, the claim of depreciation made by the assessee company of Rs.6,40,38,391/- is allowable deduction and as such, the benefit of deduction u/s 80IC is allowable on profits enhanced by the disallowance made u/s 32 of the Act and in these circumstances, the claim of depreciation is revenue neutral.

13. So far as question of treating the refund of excise duty as part of the cost is concerned, it is the case of the assessee that the

> ***entire cost has been paid by the assessee for plant & machinery and as such, it cannot be reduced from the cost of asset. Ld. AR for the assessee relied upon order passed by CIT (A) dated 15.07.2016 in assessee's own case for AYs 2012-13 & 2013-14 wherein excise duty refund has not been treated in the form of capital subsidy or grant which can be reduced from the cost of assets.***
>
> ***14. Since findings returned by the ld. CIT (A) are based upon the decision rendered by Hon'ble Apex Court in CIT vs. Meghalaya Steels Ltd. – (2016) 383 ITR 217 (SC), we are of the considered view that the excise refund is in the nature of revenue receipt forming part of profits and gains arising from the business and as such cannot be reduced from the cost of plant & machinery. So, the findings returned by ld. CIT (A) on this issue are confirmed.***
>
> ***14. In view of what has been discussed above, we are of the considered view that AO as well as CIT (A) have erred in making addition of Rs.6,40,38,391/- by disallowing the claim of depreciation of the asset made u/s 32 of the Act which would further entitle to the assessee the benefit of deduction u/s 80IC on profits enhanced by such disallowances made u/s 32 of the Act. Consequently, appeal filed by the assessee is partly allowed."***

11. In view of what has been discussed above and following the **orders passed by the coordinate Bench of the Tribunal in Assessment Years 2010-11, 2011-12 and 2012-13 & 2013-14** (supra) which are based upon the decision rendered by **Hon'ble Apex Court in case of CIT vs. Meghalaya Steels Ltd. (2016) 383 ITR 217 (SC)**, we are of the considered view that the excise refund is in the nature of revenue receipt forming part of the profit and gains arising from the business and as such cannot be reduced from the cost of plant & machinery. In these circumstances, the

contentions raised by the ld. DR for the Revenue are not sustainable.

12. So, ld. CIT(A) passed the impugned order by following the earlier years order passed by his predecessor, subsequently confirmed by the Tribunal, by rightly reaching the conclusion that, *"the assets acquired by demerged company, M/s. Dharampal Satyapal Ltd., out of the amount of excise duty refund, accounted as deferred Government grants in its books of account does not carry any force to make reduction in the cost of assets and thereby deleted the addition made on account of disallowance of depreciation"*. Consequently, finding no illegality or infirmity in the impugned order passed by the ld. CIT (A), the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 15th day of September, 2021.

Sd/-	**sd/-**
(ANADEE NATH MISSHRA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 15th day of September, 2021
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-30, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.