

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1725 & 1726/PUN/2018

निर्धारण वर्ष / Assessment Years : 2010-11 & 2014-15

DCIT, Panvel Circle, Panvel	Vs.	M/s. Johnson Matthey Chemicals India Pvt. Ltd., Plot No.6A, MIDC, Industrial Estate, Taloja, Panvel, Dist. Raigad – 410 208 PAN : AABCJ1620M
Appellant		Respondent

Assessee by
Revenue by

Shri Rajendra Agiwal
Shri A.M. Mahedevan Krishnan

Date of hearing

03-05-2021

Date of pronouncement

03-05-2021

आदेश / ORDER

These two appeals by the Revenue emanate from the common order dated 10-08-2018 passed by the CIT(A)-2, Thane in relation to the assessment years 200-11 & 2014-15. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The only issue raised by the Revenue in these two appeals is against the deletion of disallowance of depreciation on Intangible assets.

A.Y. 2010-11 :

3. Briefly stated, the facts of the case are that the assessee is a wholly owned subsidiary of Matthey Finance B.V., Netherlands. Johnson Matthey Plc, UK is the ultimate holding company. The assessee company is engaged in the business of manufacture and sale of Nickel hydrogenated catalysts. It filed return for the year declaring total income of Rs.45,91,38,138/-. Depreciation was claimed on certain Intangible assets: technical know-how, goodwill and non-compete fees. Taking cognizance of the fact that such depreciation was disallowed in the assessment orders for the A.Ys. 2004-05 to 2012-13 (except for A.Y.2010-11 under consideration), the AO disallowed depreciation on Intangible assets amounting to Rs.4,92,46,594/-. The ld. CIT(A), relying on orders of the Tribunal order for the A.Yrs. 2005-06, 2006-07, 2009-10 and other years, deleted the entire addition. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

4. We have heard the rival submissions through Virtual court and gone through the relevant material on record. It is seen that the extant issue came up for consideration before the Tribunal for the first time in its order for the A.Yrs. 2004-05 & 2005-06 (ITA Nos. 1507 and 2036/PUN/2012). Vide order dated 12-12-2017, the Tribunal allowed depreciation on such Intangible assets with the qualification contained in para 69, reading as below :

“69. Before parting, we may also point out that as per the Toll Conversion Agreement, the value of Panki assets was taken at Rs.1 lakh. However, the CIT(A) had worked out the cost of 279.30 acres i.e. total landholding of ICI India Ltd. at Rs.174 crores; in case the same rate is applied to 27.52 acres, which was the portion of land on which catalyst business was carried on, then the same would work to Rs.17.37 crores. The learned Authorized Representative for the assessee fairly admitted that the value of Rs.17.37 crores be attributed to Panki assets. However, revised allocation value of land at Panki would be Rs.13 crores, out of total slump price of Rs.153 crores. Accordingly, we direct the Assessing Officer to re-compute the value of both tangible and intangible assets, accordingly. Following the same proposition, we hold that the assessee is entitled to claim the depreciation on the value of tangible assets and further on know-how, trademarks and patents and also on the goodwill. The assessee has also claimed depreciation on non-compete fees. The Assessing Officer is also directed to allow depreciation on non compete fees of Rs.3.51 crores.”

5. From this order, it is clear that the Tribunal directed grant of depreciation on Intangible assets but on the reduced value imbibing the effect of increase in the value of the Panki land to Rs.13.00 crore and consequently reducing the value of Intangible assets. The ld. DR submitted that the Revenue has not accepted this order and its appeal before the Hon'ble Bombay High Court is pending.

6. Turning to the facts of the instant case, it is seen that the AO disallowed full depreciation on Intangible assets. However, the ld. CIT(A) overturned the assessment order without noticing the afore quoted para 69 of the Tribunal order, by which direction was given to increase the value of Panki plot to Rs.13.00 crore from Rs.1.00 lakh initially shown by the assessee and thereby correspondingly reducing the value of Intangible assets and the resultant claim of depreciation thereon. This position was fairly accepted by the ld. AR. Respectfully following the precedent, we set-aside the impugned order and restore the matter to the file of the AO for allowing depreciation on intangible assets but only after giving effect to the afore-extracted direction from para 69 of the Tribunal order. Needless

to say, the assessee will be allowed opportunity of hearing in such fresh proceedings.

A.Y. 2014-15 :

7. Both the sides are in agreement that the facts and circumstances of this appeal are *mutatis mutandis* similar to those of the appeal for the A.Y. 2010-11. Following the view taken hereinabove, we set-aside the impugned order and remit the matter to the file of the AO for deciding this issue in accordance with our directions given above.

8. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the Open Court on 03rd May, 2021.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 03rd May, 2021
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Thane
4. The PCIT-2, Thane
5. DR, ITAT, 'A' Bench, 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	03-05-2021	Sr.PS
2.	Draft placed before author	03-05-2021	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.		