

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER  
&  
SHRI K.D. RANJAN, ACCOUNTANT MEMBER

ITA No. 4589/Del/2010  
Assessment Year: 2005-06

ACIT,  
Circle 12(1),  
New Delhi.

Vs.

M/s Hari Machines Ltd.,  
Rajganpur, Sundargarh,  
Orissa.  
AAACH0868C  
(Respondent)

(Appellant)

&

Cross Objection No. 362/Del/2010  
Assessment Year: 2005-06

M/s Hari Machines Ltd.,  
Rajganpur, Sundargarh,  
Orissa.  
AAACH0868C  
(Appellant)

Vs.

ACIT,  
Circle 12(1),  
New Delhi.

(Respondent)

Appellant by : Smt. Mona Mohanty, Sr. DR  
Respondent by : Sh. M.L. Dujari, CA

**ORDER**

**PER I.P. BANSAL, J.M.**

The appeal is filed by the revenue and cross objection by the assessee both are directed against order passed by Id. CIT(A) dated 14.7.2010 for A.Y. 2005-06. Grounds of the appeal and cross objection are read as under:

Grounds of Revenue's appeal: -

1. *"On the facts and in the circumstances of the case and in law, the order of the CIT(A) is erroneous, perverse, illegal and against the provisions of law which is liable to be set aside.*

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 3,31,145/- made by the AO on account of under statement of income.*
3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 2,36,066/- made by the AO on account of under statement of income.*
4. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 82,07,445/- made by the AO on account of wrong claim of depreciation.*
5. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricted the addition to Rs. 2,68,984/- made by the AO on account of non allowance of depreciation.*
6. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."*

Grounds of assessee's cross objection: -

1. *"That the Id. AO has erred in not allowing depreciation to the assessee company on HB-8 Boring Machine.*
  2. *That the cross objector reserves its right to add one or more grounds on or before the hearing."*
2. Assessee had filed returned declaring income of Rs. 13,36,34,400/- on 29<sup>th</sup> October, 2005 and assessment has been made vide assessment order dated 28.12.2007 at an income of Rs. 14,26,99,627/-, wherein various additions aggregating to a sum of Rs. 90,65,227/- were made. Ld CIT(A) has partly deleted the addition. Against deleted amounts the revenue is aggrieved and has filed aforementioned appeal. Against the sustained disallowance the assessee has filed cross objection.

3. Ground no. 1 of the revenue's appeal is general in nature. No specific arguments were raised in that regard. Therefore, such ground does not need separate adjudication.

4. In ground no. 2 deletion of a sum of Rs. 3,31,145/- is agitated. This issue has been dealt with by the AO in para 3 of the assessment order. The addition has been made on the basis that TDS certificates filed by the assessee were showing the receipts from OCL India Ltd. at Rs. 36,00,000/- against total amount received of Rs. 39,31,145/-. The difference of Rs. 3,31,145/- has been added to the income of the assessee on account of non-offering the said difference to the returned income.

5. Before CIT(A), it has been the case of the assessee that apart from 36 lakh which is shown in the TDS Certificate, another sum of Rs. 3,32,220/- was credited to service tax account which was realized from customer and paid to Government. It was submitted that that amount did not represent income of the assessee. The AO added the said amount without affording any opportunity to the assessee. It was submitted that there was a small difference of Rs. 1,075/- which was on account of small credits on which no TDS was deductible. Hence, it was pleaded that the said amount could not be added to the income of the assessee. On these submissions Id. CIT(A) has returned a finding that the difference was on account of service tax which could not be treated as

income of the assessee. The assessee has accounted for the income part, hence, no addition on this account was called for.

6. After narrating the facts, it was submitted by Id. DR that the said amount was rightly added by the AO to the income of the assessee as assessee could not explained the difference in the amount credited in the account of the assessee relating to OCL India Ltd. and Id. CIT(A) has wrongly deleted the same.

7. On the other hand, it was submitted by Id. AR that the difference was on account of service tax payable. He drew our attention towards the detail submitted to the CIT(A) with regard to the payments received from OCL Ltd. and these details are contained in pages 52 to 65 of the paper book. He submitted that after going through all these details Id. CIT(A) has rightly deleted the addition as the difference was on account of service tax payable which could not be treated as income of the assessee. Thus, relying upon the order of CIT(A), it was pleaded that addition has been rightly deleted and his order in this regard should be upheld.

8. We have carefully considered the rival submission in the light of material placed before us. On verification of all the documents a finding has been recorded by Id. CIT(A) that the bills issued by the assessee were inclusive of service tax. Service tax is a recovery on behalf of the company and it has been paid to Government account. Element of

service tax cannot be treated as income of the assessee. No contrary material has been brought to our notice to show that these findings of Id. CIT(A) are contrary to facts existed on record. Therefore, we decline to interfere and this ground of the revenue is dismissed.

9. In ground no. 3 revenue has agitated the deletion of a sum of Rs. 2,36,066/-. This issue has been discussed by the AO in the assessment order in para 4. The AO has mentioned that as per audit report and details the sales to M/s OCL Ltd. were shown at Rs. 64,27,006/-. As against that assessee in its ledger account has shown a figure of Rs. 61,90,940/-. The difference of Rs. 2,36,066/- is added to the income of the assessee. He rejected the contention of the assessee that the said amount was on account of short recovery adjusted against future bills as no evidence of such adjustment was filed. Before CIT(A), it was pleaded that reconciliation of such transaction was filed before the AO and the reference was made to page 48 of the paper book and it was submitted that the details contained two items of Rs. 61,90,940/- and Rs. 64,27,006/-. It was submitted that with respect to former amount there was no discrepancy whatsoever. With regard to later amount, it was submitted that the income credited by the assessee is a sum of Rs. 62,60,731/- and difference of Rs. 1,66,275/- was on account of charges of taxes and duties. It was submitted that those taxes could not be treated to be income of the assessee. On these submissions Id. CIT(A) has recorded a finding that the contention of the assessee is reasonable

and he has recorded his satisfaction that the addition made by the AO was not called for. The revenue is aggrieved, hence in appeal.

10. Relying upon the order of AO, it was submitted by Id. DR that the addition was rightly made. She submitted that Id. CIT(A) has wrongly deleted the addition and his order should be set aside and that of AO be restored.

11. On the other hand, relying upon the submissions made before CIT(A) and the findings recorded by him, it was pleaded by Id. AR that the addition has rightly been deleted and the order of CIT(A) on this issue should be upheld.

12. We have carefully considered the rival submission in the light of material placed before us. In the submissions made before CIT(A) it was submitted that there were two separate transactions. Rs. 61,90,940/- relates to sale of goods. Another amount of Rs. 64,27,006/- related to sale of power plant. It was also submitted that in the profit and loss account a sum of Rs. 62,60,331/- was credited and not a sum of Rs. 61,90,940/- as claimed by the AO. It was submitted that debit also includes element of service tax and the difference is on account of such element of taxes and duties which have been accounted for separately. On these submissions Id. CIT(A) has recorded a finding that the actual difference was a sum of Rs. 1,66,275/- and it was not 2,36,066/- as added by the AO and secondly that the said difference was on account

of charges of taxes and duties. No material has been brought on record to show that these findings of fact recorded by Id. CIT(A) are contrary to the facts existing on record. In absence of any such material, we decline to interfere in the relief given by Id. CIT(A) and this ground of the revenue is dismissed.

13. In ground no. 4 revenue is agitating the deletion of addition of Rs. 82,07,445/- made on account of wrong claim of depreciation. This issue is discussed by the AO in para 8 of the assessment order. It is mentioned by the AO that during the year under consideration assessee had added a new fabrication unit in its factory. Such unit contained two 50T Cranes, Plate Bending Machine and HB-8 Horizontal Boring Machine. As per fixed register maintained by the assessee, the date of capitalization (which assessee also treats as date of put to use) in respect of different component is as under: -

S.No.	Item	Date	Amount	No. of days
1.	Electrical Equipment	30-09-04	3404680	183
2.	Patter & Dies 350/1W TPD Spongtron Equipment	31-03-05	1,74,752	1
3.	Plate Bending Machine	25-06-04	24,98,482	280
4.	50 T Crane 2 Nos	24-07-04	1,47,83,212	251
5.	HB-8	13-01-05	1,57,41,437	78
6.	Building capitalized	21-03-05	2,09,26,582	11

14. Observing from above facts, the AO has arrived at a conclusion that factory building was capitalized or treated as ready to be used only on 21.3.2005. Therefore, expressing the doubt AO has mentioned that the different machines how could be claimed to have been put to use

even before factory was completed. The assessee was required to produce evidence in respect of factory building along with machines to show that whether they were put to use or not. In response vide letter dated 20.12.07 it was submitted that a sum of Rs. 2,09,26,582/- was capitalized on account of a new fabrication shop. The job of such fabrication shop was completed on 21.3.2005, therefore, depreciation is claimed on the basis of completion of fabrication shop on 21.3.2005. It was submitted that pending completion of roofing etc. the fabrication work on such shop was already commenced even earlier than the completion of the entire work on the fabrication shop. Reference was made to the inspection certificate dated 27<sup>th</sup> August, 2004 issued by the electrical inspector in respect of power supply to Goliath Crain, Plate Bending Machine and electrical installation of control panel, distribution boards, switch fuse units and power cables under the head "electrical installation". The power supply to the Crain was made on 24<sup>th</sup> July, 2004, to Plate Bending Machine on 25.6.2004 and to various electrical installations on 30<sup>th</sup> May, 2004 and thus, it was claimed that depreciation on fabrication shop is allowable. Copies of log sheets in respect of operation of SAW-1 Machine & HB-8 Machine to claim that operation in fabrication shop had begin ever before completion of new shed were also filed. The AO considered the reply filed by the assessee as unsatisfactory for the following reasons: -

- i) *"There is no evidence of any nature in respect of cranes and other machines being put to use before the date of completion of factory or even after that date.*

- ii) *The inspector report in respect of electrical equipment relied upon by the assessee does not indicate that equipment was put to use. Rather it is a step in preparation and certification that electrical supply lines etc. have been laid according to the norms prescribed for industrial power. The inspection report of Electrical Inspector simply verifies that installation was in place and is in accordance with norms prescribed. In fact it being preparatory requirement is also evident that the Inspector is allowing the Installations to be energized whether actual put to use took place or only trial of checking power line was there is not know. The fact of matter is that in Industrial Shed the lines are laid out in the period when shed are under construction and after testing of power requirement and its soundness further construction and installation takes place. Therefore, this report may serve as evidence of electrical installation in place and fit for use but does not show actual use which in any case can be only after factory shed has been completed.*
- iii) *The case of HB-8 would clearly establish that log books and other evidence produced and relied upon by assessee do not support rather they are in complete contradiction to evidence already produced. In the log book copies produced it is claimed that production from this machine started from 13-01-05 onwards whereas the documents given in respect of acquisition reveal that machine was in Calcutta Port till 06-01-05. The surveyor report dated 16-02-05 given by assessee mention that surveyor had inspect the packed 4 containers containing the machine on 5 & 6 January'05 at Kolkata port. Therefore, the presumption is that machine got transported to Orissa, got erected and tested and started production all within 7 days which is against possibilities."*

15. The AO referred to the voucher of capitalization of machine which is named as JV-24 in which it was shown that the assessee had paid the amount to M/s V. Sudershan Nair of Chennai against bill dated 31.3.2005 in respect of erection work of HB-8 Machine and the contract of erection of such machine was given only on 20.2.2005. Thus, he has denied the claim of depreciation to the assessee. He observed that there is no evidence that the machines and buildings were put to use and he observed that at best they can said to be ready to use. As the assets were not used, the depreciation is not allowable. It is in this manner, the entire claim of depreciation of Rs. 82,07,445/- has been denied to the assessee. The submissions made before AO were reiterated before CIT(A). It was submitted that Governments Electrical Inspector had inspected the equipments and permitted its energisation. On such energisation they are put to use. Reference was made to the report dated 27<sup>th</sup> August, 2004. Reference was also made to the other evidences produced before the AO to show that power supply to 50 Ton Cranes were made on 24<sup>th</sup> July, 2004, to Plate Bending Machine on 25.6.2004 and to electric installations on 30<sup>th</sup> May, 2004. Thus, it was pleaded that AO is wrong in not allowing the claim to the assessee. So as it relates to depreciation on HB-8 equipment it was submitted that merely because the contractor who has completed the erection work has raised bill on 31.3.2005, it does not mean that such erection was not completed before 31.3.2005. Referring to the observation of AO that plant was ready to use, it was submitted that according to decision of Gujarat High Court in the case of CIT Vs. Sonal Gum Industries 322 ITR

542, under the concept of Block of assets the depreciation is allowable even on the machinery which is ready to use. On these submissions of the assessee Id. CIT(A) has recorded a finding that by placing the report of Inspector on record the assessee has produced sufficient evidence of putting to use the electric installation, Plate Bending Machine and 50 Ton Cranes. He observed that once a Government Authority inspecting the equipment, certifies the date of power supply to the equipments and after inspection has permitted energisation of the equipment then it has to be accepted that the equipments were put to use at least on the date when Government Authority has issued the certificate. He, therefore, directed to allow the depreciation in respect of Plate Bending Machine, 50 Ton Cranes and electric installations as claimed by the assessee. However, in respect of depreciation relating to HB-8 he has observed that the said machinery could not have been put to use during the year under consideration, hence, he has disallowed the depreciation on the said machine. Thus, part relief has been given to assessee. In revenue's appeal the relief given by the CIT(A) has been agitated and in assessee's cross objection non-grant of depreciation on HB-8 Boring Machine is agitated.

16. We have heard both the parties on this issue and their contentions have carefully been considered. Ld. DR relied upon the order of AO as against that so as it relates to deletion of the addition, Id. AR has relied upon the order of CIT(A) and on the other part he has

submitted that depreciation could not be disallowed as the HB-8 Machine was at least put to use on 31.3.2005.

17. We have carefully considered the rival submissions and we have also gone through the order of AO and CIT(A). A finding of fact has been recorded by Id. CIT(A) that so as it relates to depreciation relating to Plate Bending Machine, 50 Ton Cranes and electrical installations, the user of these assets is backed by the report of electrical inspector who is a Government Authority authorize to inspect the equipment and to grant certificate regarding energisation of those assets. It has not been shown by the revenue that these findings recorded by Id. CIT(A) are contrary to the facts existing on record. Therefore, we decline to interfere in the relief given by CIT(A) and this ground of the revenue is dismissed.

18. Now coming to the cross objection filed by the assessee, Id. AR could not furnish any evidence to show that HB-8 Machine in fact was put to use before 31.3.2005. Id. CIT(A) has also recorded such finding that no evidence has been produced by the assessee regarding user of the said asset. Therefore, we find no substance in the cross objection filed by the assessee as the assessee has not been able to prove that the said machine was put to use during the year under consideration. The cross objection of the assessee has raised only this issue therefore, the same is dismissed.

19. Now coming to ground no. 5 of revenue's appeal this issue has been discussed by the AO in para 6 of the assessment order. After going through the expenditure relating to repairs of building and machinery the AO observed that various expenditures were of capital in nature. Working out those expenditure at a sum of Rs. 2,68,984/- the said amount was added to the income of the assessee as the same was not capitalized by the assessee. Ld. CIT(A) has directed the AO to allow depreciation on that amount on the ground that if they are not considered as current repair and maintenance then it is capital expenditure and form part of fixed assets on which depreciation is allowable. Therefore, Id. CIT(A) has directed the AO to allow the depreciation on such amount.

20. We have heard both the parties on this issue and we find no infirmity in the order of CIT(A) in which it has been held that in case of disallowance made on account of those expenditure being capital in nature then depreciation has to be allowed. We decline to interfere and ground no. 5 of the revenue is dismissed.

21. In the result, the appeal as well as cross objection both are dismissed in the manner aforesaid.

Order was pronounced in the Open Court on 09.05.2011

Sd/-  
**(K.D. RANJAN)**  
**ACCOUNTANT MEMBER**  
Dated: 9.5.11  
\*Kavita Chopra

Sd/-  
**(I.P. BANSAL)**  
**JUDICIAL MEMBER**

Copy forwarded to: -

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

TRUE COPY

By Order,

**DEPUTY REGISTRAR**