INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 3825/Del/ 2017
Assessment year 2011-12

Bio-Rad Laboratories (India) Pvt. Ltd. 86-87, Udyog Vihar IV, Gurgaon, Haryana 122015 PAN AAACB3202A	Vs.	DCIT, Circle -5(1) New Delhi.
(Appellant)		**(Respondent)**

ITA No. 4698/Del/2017
Assessment year 2011-12

Addl. CIT, Special Range-2, Room No. 389A, C.R. Building, New Delhi.	Vs.	Bio-Rad Laboratories (India) Pvt. Ltd. 86-87, Udyog Vihar IV, Gurgaon, Haryana 122015 PAN AAACB3202A
(Appellant)		**(Respondent)**

ITA No. 221/Del/2017
Assessment year 2012-13

Bio-Rad Laboratories (India) Pvt. Ltd. Plot No. 1270, Lal Dora, Kapashera Village, Opposite Fun & Food Village New Delhi – 110 037 PAN AAACB3202A	Vs.	ACIT, Circle-5(1), New Delhi.
(Appellant)		**(Respondent)**

Assessee by:	Shri K.M. Gupta, Advocate Ms. Shruti Khimta, AR
Department by :	Shri M. Barnwal, Sr. DR
Date of Hearing	07/01/2021
Date of pronouncement	19/01/2021

O R D E R

PER R.K. PANDA, AM :

ITA No. 3825/Del/2017 and ITA No. 4698/Del/2017 are cross appeals and are directed against the order dated 14th December, 2016 of the Ld. CIT(A)-44 New Delhi relating to assessment year 2011-12.

2. ITA No. 221/Del/2017 filed by the assessee is directed against the order dated 31st October, 2016 passed u/s 143(3) r.w.s. 144C(13)of the Act for the assessment year 2012-13. For the sake of convenience these were heard together and are being disposed of by this common order.

ITA No.3825/Del/2017 (Asstt. Year 2011-12) (by assessee)
ITA No. 221/Del/2017 (Asstt. Year 2012-13) (by assessee)

3. Ld. Counsel for the assessee filed an application seeking withdrawal of the above two appeals on the ground that assessee has opted for the Vivad Se Vishwas Scheme 2020 and has obtained Form,

No. 3 under the provision of section 5(1) of the Vivad Se Vishwas Scheme on 24th December, 2020.

4. Considering the aforesaid situation, the captioned appeals are consigned to record and treated as dismissed. However, the aforesaid is subject to a caveat that in case the dispute relating to tax arrears for the captioned assessment years is not ultimately resolved in terms of the aforesaid scheme, the assessee shall be at liberty to approach the Tribunal for reinstitution of the appeals and the Tribunal shall consider such application appropriately as per law. The Revenue has no objection with regard to the aforesaid caveat.

5. In view of the aforesaid, both the appeals filed by the assessee are consigned to record and for statistical purposes are treated as dismissed.

ITA No. 4698/Del/2017 (Asstt. Year 2011-12) (By revenue)

6. The only effective ground raised by the revenue reads as under :-

1. *"Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in making deletion amounting to Rs. 2,96,50,443/- on account of depreciation on rental assets without considering the facts that depreciation was claimed on higher purchases.*

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

7. Facts of the case, in brief, are that the assessee is a company engaged inter alia in imports, exports and trading of scientific goods, instruments, apparatus, reagents and kits of life sciences group and clinical diagnostic division. It filed its return of income on 29.11.2012 declaring total income of Rs.26,52,71,550/- as per normal provisions of the Income Tax Act, 1961 and book profit of Rs. 26,00,32,781/- u/s 115JB of the Act. During the course of assessment proceedings the AO noted from the depreciation table as per I.T. Chart filed with the return of income that the assessee company has claimed depreciation of Rs.2,96,50,443/-on rented assets. He, therefore, asked the assessee to explain the justification for the same and asked the assessee to explain as to why the same should not be added to the total income by following the order of the preceding assessment years. It was submitted by the assessee that similar addition made during

the preceding year was deleted by the Ld. CIT(A). However the AO was not satisfied with the arguments advanced by the assessee on the ground that the revenue has not accepted the same and has preferred appeal before the Tribunal. He accordingly made addition of Rs. 2,96,50,443/-to the total income of the assessee.

8. In appeal the Ld. CIT(A) deleted the addition by observing as under :-

"5.3 Decision

I have considered the findings of the Assessing Officer, arguments of the Ld. AR and the decision of Hon'ble ITAT in appellant's own case.

Hon'ble ITAT for year dated 19/09/2016 in ITA No. 3284/Del/2010 for AY. 2002-03, ITA No.3330/Del/2010 for AY. 2003-04, ITA No.4712/Del/2011 for AY. 2004-05, ITA No.2466/Del/2012 for AY. 2005-06, ITA No.490/Del/2011 for AY. 2006-07, ITA No.l266/Del/2013 for AY. 2008-09. For A.Y. Findings of the Hon'ble ITAT are as under:-

"We have carefully considered the rival contentions. The coordinate bench has considered the identical issue wherein depreciation was allowed on machineries which arc installed at the manufacturing premises of another company from whom assessee purchases the packed fruit juices. The coordinate bench in ITA No. 482/Del/2009 dated 18.02.2010 vide para No. 5 to 7 has held as under:-

"5. We have considered the rival submissions. A perusal of the decision of Hon'ble Supreme Court in the case of Liquidators of Pursa ltd. shows that the Hon'ble Supreme Court therein has clarified (he ***meaning*** *of the words "used for the purpose of business" as was available in Section I0(2)(iv) of the 1. T Act, 1922 the IT A term which is used in Section 32 of the I T. Act, 1961 The Hon'ble Supreme Court has held that the said term means that the machinery & plant is used for the purpose of enabling the owner to carry on (he business and earn profit in the business. With this meaning in mind if the fads in the present case are seen, it is noticed that the assessee is in the business of trading in packed fruit juices. As per the assessee's product supply agreement entered into by the assessee with Dynctmix right from 18 th Feb 1999. it is noticed that Dynamix is to manufacture fruit juices as per the requirement of the assesses and it is to be packed in accordance with the packing instructions and the packing material and design have to be approved by the assessee. The manufacture and the packing are to be as per the specifications and quality standards decided by the assessee. The trademark belongs fully to the assessee. Even the raw material and oilier inputs as are required for the manufacture of the fruit juices are to be sourced from the sources and as per the specification approved by the*

assessee. 'Thus, a perusal of the product supply agreement shows that Dynamix is manufacturing the fruit juices for and on behalf of the assessee. Dynamix has no say in the method of manufacture, product mix, sourcing of raw material quality of raw material, method of packing, design of packing etc. It is not a case where Dynamix manufacture fruit juices and the assessee is a dealer for the fruit juice manufactured by Dynamix. A perusal of the equipment Supply Agreement between the assessee and the Dynamix clearly shows that it manufactures the fruit juices as per the requirement of the assessee and as agreed between the assessee and Dynamix in the Troducl Supply Agreement, the Dynamix required the assessee to provide the equipments and wanted to place a responsibility on the assessee so that the assessee does not end or terminate the agreement with Dynamix after Dynamix invests substantial amount in the machinery which would remain the liability in (he hands of Dynamix if the assessee back out the agreement. It is noticed that the assessee as per the request of Dynamix has provided the machinery for the purpose of manufacturing the products under the Product Supply Agreement. A perusal of the agreement also shows that it is clearly understood that the machinery would belong to the assessee and not the Dynamix and Dynamix had no charge or claim over the machinery.

Even the servicing, maintenance and spare parts of the machinery> was to he in done in the presence of the representative of the assessee even though the cost for the same was to be borne by Dynamix. Its has also been clearly understood between the parties that the Dynamix cannot use (he machinery/ provided by the assessee for the purpose other than manufacturing products as agreed upon in the Product Supply Agreement. In these circumstances', as it is noticed (hat the machinery has been provided by the assessee to Dynamix for the purpose of manufacturing the product of the assessee it would have to be held that the machinery has been used for the purpose of the business of the assessee and consequently (he assessee would be entitled for claiming the. depreciation In respect of the depreciation in regard to the Visi Refrigerators, it is noticed that these refrigerators have been installed at the premises of the dealers of the products dealt with by the assessee. Obviously, the product dealt in by the assessee are perishable commodities which have shelf life and which have to be maintained between a specific temperature. The A. O. has not pointed out anything to show that the refrigerators were not used for the business of the assessee. In fact the order of the A.O. specified that the refrigerators were not proved to have been put to business use during the relevant

previous year. The fact that these refrigerators were at the various outlets all over India as recorded by the A.O. itself shows that the refrigerators- have been put to use as these refrigerators are. at the premises of the dealers of the product of the assessee and consequently the assessee would be entitled to the claim of depreciation.

7. In the appeal of the revenue in I.T.A. No. 510/Del/2009 identical issue has been raised and it is noticed that the CIT(A) has relied upon his decision for the Assessment year 2004-05 for deleting the disallowance of deprciatiion. As we have held that the decision of the Ld. CIT(A) to the issue in I.T.A. No. 482/Del/2009 is on a right footing the same finding would apply to this appeal also in ITA. No. 810/Del/2009."

Following the decision of Hon'ble ITAT in appellant's own case cited supra and relying on the decision of my predecessor CIT(A) in earlaier assessment years in appellant's own case, I direct the AO to delete the addition as the facts are exactly similar. This ground of appeal is allowed."

9. Aggrieved with such order of the Ld. CIT(A) the revenue is in appeal before the Tribunal.

10. We have heard the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case disallowed the depreciation of Rs.2,96,50,443/- on the ground that the assessee company is not using the assets for self use and the assets were hired out for a fixed period and the agreements provided that on payment on all instalments the title of the assets passes on to the hirer. We find the Ld. CIT(A) deleted the disallowance made by the AO, the reasons of which have already been reproduced in the preceding paragraph. A perusal of the order of the Ld. CIT(A) shows that while deleting the disallowance he has followed the decision of the Tribunal in assessee's own case in the preceding assessment year. Since the AO while disallowing the depreciation has followed the order of his predecessor and disallowed the depreciation holding that the order of the Ld. CIT(A) deleting the disallowance has been challenged by the revenue before the Tribunal and since the Tribunal has already deleted such disallowance, therefore we do not find any infirmity in the order of the Ld. CIT(A) deleting such disallowance of depreciation. Ld. DR could not point out any distinguishing features so as to take a contrary view from the view taken by the Ld. CIT(A) on this issue. Accordingly the ground raised by the revenue is dismissed.

11. In the result both the appeals filed by the assessee and the appeal filed by the revenue are dismissed.

Order pronounced in the open court on 19/01/2021.

sd/-	sd/-
(KULDIP SINGH)	**(R.K. PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19th January, 2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi