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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.5339/Del/2019
(Assessment Year : 2014-15)

Vibracoustic India Pvt. Ltd. R-561, Shankar Road, New Rajinder Nagar, New Delhi **PAN No. AABCS 7623 P**	Vs.	ACIT Special Range-9 New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri K.C. Singhal, Adv.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	29.06.2022
Date of Pronouncement:	29.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 15.04.2019 of the Commissioner of Income Tax (Appeals)-9, New Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing anti-vibration auto parts. Assessee electronically filed its return of income for A.Y. 2014-15 on 29.11.2014 declaring income at Rs.59,44,61,550/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 144C of the Act vide order dated 26.12.2017 and the total income was determined at Rs.59,91,92,361/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 15.04.2019 in Appeal No.10502/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

> *"1. That on facts and in law, the CIT(A) was not justified in confirming the disallowance of additional depreciation u/s 32(1)(iia) of the Act amounting to Rs.47,30,811/- disregarding the various decisions of the Hon'ble Tribunal.*
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> *2. The appellant craves to raise any other ground with the approval of the Hon'ble tribunal."*

5. During the course of assessment proceedings, AO on perusal of the Profit and Loss account noticed that assessee had claimed additional depreciation of Rs.47,30,811/- u/s 32(1)(iia) of the Act. Assessee was asked to show-cause as to why additional depreciation should not be disallowed. Assessee *inter alia* submitted that the additional depreciation @10% was on the plant and machinery and mould purchased between 2nd Oct 2012 to 31st March 2013 in F.Y. 2013-14. It was further submitted that since in that year, the assessee had put the assets at less than

180 days from the date of acquisition of the assets, assessee had claimed additional depreciation @10% in 2013-14 and the balance 10% additional depreciation was claimed in A.Y. 2014-15. The submissions of the assessee was not found acceptable to AO. AO was of the view that the provision of Section 32(iia) does not provide any allowance for claim of additional depreciation in the next year in which the additions have been made. He was further of the view that the newly inserted provision for allowing carry forward of additional depreciation in next year were applicable w.e.f. 01.04.2016 and not applicable to A.Y. 2013-14 and therefore not applicable to the year under consideration. He accordingly denied the claim of additional depreciation of Rs.47,30,811/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

7. Before us, Learned AR reiterated the submissions made before lower authorities and further submitted that the full benefit of additional depreciation u/s 32(1)(iia) of the Act was not claimed by the assessee as the new assets were purchased for less than 180 days in that year. He submitted that the assessee has therefore claimed the balance additional depreciation in the year under consideration. He submitted that the benefit of additional depreciation u/s 32(2)(iia) of the Act is available in full as soon as the new assets are purchased and the fact that the

said assets were put to use for less than 180 days does not affect such benefit. In support of his aforesaid contention, he placed reliance on the decision rendered by Delhi Bench of Tribunal in the case of DCIT vs. Cosmo Films Ltd. reported in [2012] 139 ITD 628, decision of Madras High Court in the case of CIT vs. Hinduja Foundries reported in 281 Taxman 448 (Mad), decision of Karnataka High Court in the case of CIT vs. Rittal India (P) Ltd. reported in 380 ITR 423 (Kar). He therefore submitted that in view of the aforesaid decisions, the claim of the assessee for the additional depreciation be allowed.

8. Learned DR on the other hand supported the order of lower authorities and further submitted that provision for deduction of additional depreciation is for the new plant and machinery which has been added during the year under consideration and it cannot be allowed on the machinery that has been added in earlier year. He thus supported the order of lower authorities.

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of additional depreciation u/s 32(1)(iia) of the Act. It is an undisputed fact that the assessee had made additions to plant and machinery amounting to Rs.4,79,99,405/- for the assets purchased between 2nd Oct 2012 to 31st March 2013. In assessment year 2013-14, since the assets were utilized for less than 180 days period, it had claimed additional depreciation @10% as against the eligibility of additional

depreciation being 20%. The balance 10% of the additional depreciation has been claimed by the assessee in the year under consideration. The lower authorities had disallowed the claim of additional depreciation only for the reasons that the assets on which the assessee has claimed additional depreciation were not installed / added during the year under consideration but were added in earlier financial year. We find that identical issue arose before Hon'ble Bombay High Court in the case of The Pr. Commissioner of Income Tax v/s. M/s. Godrej Industries Ltd., ITA No.511 of 2016 order dated 24.11.2018 wherein after considering the decision of Hon'ble Karnataka High Court in the case of Rittal India (P) Ltd. (supra) and other decisions cited therein has decided the issue in favour of the assessee by observing as under:

> *"5. Having heard Counsel for the Revenue and for the Assessee, we notice that the Assessee's claim of additional depreciation arises out of clause (iia) of sub-section 1 of Section 32 of the Act. Clause (ii) of sub-section 1 of Section 32 of the Act recognizes the depreciation on block of assets. Clause (iia) grants additional depreciation in case of acquisition and installation of new machinery or plant by an Assessee after 31st March, 2005, the Assessee being engaged in business of manufacture or production of an article or things.*
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> *6. We may also notice that the second proviso to clause (ii) of sub-section 1 of Section 32 of the Act, would restrict Assessee's claim of depreciation to 50% in case, the assets are acquired by the Assessee during the previous year and put to use for the purposes of business or profession for a period less than 180 days in the said previous year.*
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> *7 . In the context of such statutory provisions, the Revenue has raised the question – whether when 50% of the additional depreciation is claimed by the Assessee in a particular Assessment Year, since the acquisition and putting in to use of the assets in the previous Year was for less than 180 days, the*

Assessee can claim the remaining depreciation in the subsequent Assessment Year. Such a question came up for consideration before the Division Bench of Karnataka High Court in Commissioner of Income Tax and Another v/s. Rittal India Pvt. Ltd., reported in 380 ITR 423. The Court, after referring to the statutory provisions, held and observed in para 8 as under:-

> *"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 April 1, 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 purposes of business. The proviso to clause (ii) of the said section makes it clear that only 50 per cent of the 20 per cent would be allowable, if the new plant and machinery so acquired is out to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10 per cent would not be allowed to be claimed by the assessee in the next assessment year.*
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> *The language used in clause (iia) of the said section clearly provides that "a further sum equal to 20 per cent 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 per cent additional depreciation. By virtue of the proviso referred to above, only 10 per cent 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 per cent additional deduction can be availed of in the subsequent assessment year, otherwise the very purpose of insertion of clause (iia) would be defeated because it provides for 20 per cent deduction which shall be allowed.*
>
> *It has been consistently held by this Court, as well as the apex court, that the beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be*

allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a one-time benefit to encourage industrialization, and the provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting the additional allowance. We are in full agreement with such observations made by the Tribunal.

In view of the aforesaid, we do not find that any interference is called for with the order of the Tribunal, or that any question of law arises in this appeal for determination by this court."

After the said judgment of the Karnataka High Court in Rittal India Pvt. Ltd., (supra), legislation has also amended the statutory provisions by adding the third proviso to clause (ii) of sub-section 1 of Section 32 of the Act, which reads as under:-

> *" Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset."*

8. The third proviso, thus, now recognizes the right of an Assessee to claim the remaining 50% depreciation in subsequent year in a case where machinery and plant being acquired and put to use for less than 180 days in the previous year, the depreciation

was restricted to 50%. Such a situation as in the present case, was considered by the Division Bench of the Madras High Court in Commissioner of Income Tax v/s. Shri T. P. Textiles Pvt. Ltd., 394 ITR 483, the Court referred to the judgment of the Karnataka High Court in Rittal India Pvt. Ltd., (supra) as well as the addition of third proviso to clause (ii) of sub-section 1 of Section 32 of the Act and observed as under:-

> *"10.1:- The plain language of section 32(1)(iia) read along with relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10 per cent of additional depreciation in the succeeding assessment year.*
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> *10.2:- As a matter of fact, with effect from April 1, 20916, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the legislature, incorporating in the Statute, the necessary clarificatory amendment.*
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> *10.3 ....*
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> *11:- We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum explaining the provisions in Finance Bill, 2015" whereby, the aforementioned amendment was brought about.*

11.1:- The relevant part of the memorandum is extracted hereafter:-

> *" .... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50 per cent of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.*
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> *This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."*
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> *11.2:- A perusal of the extract of the memorandum relied upon would show that the legislature recognized the fact that the manner in which the Revenue chose to interpret the*

provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

11.3:- In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4:- We are, clearly, of the view that the memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5:- In any event, in so far as the court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the assessee could not claim balance depreciation in the assessment year, which follows the assessment year, in which, the machinery had been bought and used, albeit, for less than 180 days."

9. It could be thus, to seen that the Karnataka High Court in Rittal India Pvt., Ltd.,(supra) even without the aid of the statutory amendment held that remaining 50% unclaimed depreciation would be available to the Assessee in the succeeding Assessment Year. Now the legislation has amended the provision by adding a proviso which, specifically recognizes the said right. The Madras High Court in Shri T. P. Textiles Pvt. Ltd., (supra) ruled that such proviso being clarificatory in nature, would apply to pending cases, covering past period also.

10. We have no reason to take view different from two High Courts, examining the situation at considerable length. In the result, no question of law arises."

10. We further find that the Hon'ble Bombay High Court while deciding the issue has also noted the effect of the amendment made by Finance Act 2015. Before us, no binding decision of Hon'ble Jurisdictional High Court or Apex Court in support of Revenue has

been placed by Learned DR. Considering the totality of the aforesaid facts, we are of the view that assessee is eligible for claiming additional depreciation u/s 32(1)(iia) of the Act and therefore the same should not have been denied by the AO. We thus direct the AO to allow the claim of additional depreciation **thus allow the ground of assessee.**

11. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 29.06.2022

Sd/-	**Sd/-**
(ANUBHAV SHARMA) **JUDICIAL MEMBER**	**(ANIL CHATURVEDI)** **ACCOUNTANT MEMBER**

Date:- 29.06.2022

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Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI