



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 256/2009**

Reserved on: September 9, 2009.

Pronounced on : September 14, 2009

ANURENA TRISTAR

...Appellant

Through: Mr. Rajesh Mahna, Advocate with Mr. Ramanand Roy, Advocate and Mr. Navneet Dhillon, Advocate for the appellant.

VERSUS

I.T.O.

....Respondent

Through: Ms. Sonia Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest?

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VALMIKI J. MEHTA, J

1. The issue which arises for determination in the present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) is whether the appellant-assessee is entitled to additional depreciation of 15% (in addition to the depreciation of 25% permissible under Section 32(1) of the Act).



In order to get the benefit of additional depreciation, it is necessary for t assessee to show that he has installed in his unit a new machinery as per Section 32(1)(ia). All the three authorities below, namely, the Assessing Officer, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have held that the appellant-assessee is not entitled to the benefit of additional depreciation as the machinery in question is not new.

2. The stand of the assessee is best reflected in the relevant portion of the written submissions dated 2nd December, 2006 filed by it before the Commissioner of Income Tax (Appeals) and which is as under:

“ The main machinery and its parts shall be assembled by the fabricators who have the identified shells and parts brought from place outside India and they undertake to fabricate the machines, recondition and place new part in them to later assemble them in India in accordance with the requirement of the unit. In doing so they place various parts, fix them different assemblies, do the electric installations as per the advise of the consultants. **Some** of the machines which are imported are called ‘**used components**’. While importing the machinery on the bill of entry disclose the fact that **most of** the components and parts of the machinery are brought in India as ‘**used components**’ like sequences a/c model universal, dual axial_inseater, duel head axial assembly. Those machines were shown old and reconditioned, rest of the machines like kit assembly, kit clutch/cutmen assembly kit electrical assembly, kit sequencer etc. which were imported were new assemblies and fabricated to make in to New Plant & Machinery along with other machinery and components purchased in India to constitute “New Plant & Machinery” and since there were no evidence or identification of any earlier user whether the same plant or machinery was used by other person, simply because part of the machinery sent by the fabricator from outside the country shown as old cannot be interpreted to take away the benefit of additional



depreciation”.

3. In view of the abovesaid position, the Commissioner of Income Tax(Appeals) has accordingly held as under:

“4.3.4 The next claim of the appellant that reconditioned machinery which had incorporated used and a few new components could be considered as new plant & machinery which was not used prior to appellant either within or outside India. In the absence of further material to show what were the dates on which the machines were manufactured, for what period they were previously used, what were the latest available technical improvements which were incorporated therein and what was the nature and cost of these improvements in relation to the total nature and cost and so on, it is not possible to decide the question whether the machines were ‘new’ within the meaning of section 32(1)(iia) of the Act. It was necessary to find out whether the machines after being reconditioned were entirely different from the old machines and whether the latest improvements incorporated into them made the machines substantially new In other words, the question whether the reconditioning of the machines amounted to reconstruction or substitution of the entire machinery, meaning by entirely, not necessarily the whole, but substantially the whole subject matter of the machinery can be answered with relevant details which were neither filed before the Assessing Officer nor before me. The word ‘new’ in the context of clause (iia) must be construed as meaning ‘not existing before, new made or brought into existence for the first time’, and in contradistinction and antithesis to the word ‘used’. My above conclusion gets support from the judgment of Hon’ble Supreme Court in case of Cochin Company Vs. CIT (1968)67 ITR 199. In view of above fact and respectfully following the principle laid down by the Hon’ble Apex Court in the above cited judgment as discussed above, I am of view that during the year under consideration appellant had used second hand imported and reconditioned machinery and both class of machinery could not be held as new plant & machinery. It is also held that these machineries were used outside India before installation by the appellant. Accordingly, the



Assessing Officer was justified in rejecting the claim of additional depreciation of Rs.9,74,392/- u/s 32(1) of the Act.”

4. From the aforesaid finding of the Commissioner of Income Tax (Appeals) which has also been accepted by the Income Tax Appellate Tribunal, it is clear that the machines were old and used machines. In fact, no evidence was filed by the appellant to show as to how the use of mostly old parts for fabricating the machines could convert the machines into new machines by incorporating the latest technical improvements, what was the nature and cost of these improvements and so on and consequently it cannot be said that the machines in question are new machines. The counsel for the respondent has rightly relied upon the decision of the Supreme Court in *Cochin Company Versus C.I.T. 67(1968) ITR 199* which has been referred by the Commissioner of Income Tax (Appeals) in his order. The judgment relied upon by the counsel for the appellant in *254(2002) ITR 24* has no application to the facts of the present case as in the said case, the Court was dealing with the requirement of the machinery having not been used by the assessee earlier and it did not deal with the question of use of the new machinery and plant by the assessee.
5. There is, therefore, a finding of fact arrived at by all the three authorities below that the machinery is old/used machinery and the same cannot be interfered by this Court under Section 260A of the Act as undoubtedly the Income Tax Appellate Tribunal is the final fact finding authority. In view



of the finding of fact that machines in question are old machines, v
uphold the order of Income Tax Appellate Tribunal that the assessee is
not entitled to the benefit of additional depreciation of 15% under Section
32(1)(ia). No substantial question of law arises and the present appeal, is
therefore, dismissed.

VALMIKI J.MEHTA, J

A. K. SIKRI, J

September 14, 2009
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