

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.7284/Del/2019
निर्धारणवर्ष/Assessment Year: 2016-17

ACIT Circle 41(1), New Delhi.	बनाम Vs.	Nimit Kumar Aneja, Plot No. 12, Road No.26, East Punjabi Bagh, New Delhi.
		PAN No. ABNPA7305G
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Ms. Garima Sharma, Sr. DR
निर्धारितीकीओरसे /Assessee by	Shri R.S. Singhvi, Adv. Shri Satyajeet Goel, Adv.

सुनवाईकीतारीख/ Date of hearing:	06.06.2022
उद्घोषणाकीतारीख/Pronouncement on	10.06.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-14, New Delhi dated 26.06.2019 for the AY 2016-17. The only grievance of the Revenue in its appeal is that the Ld. CIT(A) erred in allowing depreciation of Rs.2,00,53,867/- u/s 32 of the Act.

2. Brief facts are that the assessee for the AY 2016-17 e-filed his return of income on 14.10.2016 declaring nil income after adjusting

brought forward losses of Rs.7,37,804/-. In the course of assessment the Assessing Officer noticed that assessee has reported net income of Rs.7,37,004/- and the same was set off against unabsorbed depreciation of the AY 2015-16. The Assessing Officer noticed that the assessee has not claimed depreciation in respect of the project M/s Him Fresh Produce Company though depreciation was claimed in the AY 2015-16 on the said project. The Assessing Officer proposed to reduce the carry forward of WDV of the assets of M/s Him Fresh Produce Company since there was no reply from the assessee and accordingly reduced the WDV of assets of M/s Him Fresh Produce Company as on 31.03.2016. However, since no depreciation has been claimed by the assessee in the original return of income benefit of revised WDV is not given to the assessee placing reliance on the decision of Hon'ble Supreme Court in the case of Goetze India Limited vs. CIT (284 ITR 323). In other words the depreciation on the project Him Fresh Produce Company was not allowed for the current assessment year i.e. 2016-17.

3. On appeal the Ld. CIT(A) directed the AO to compute the depreciation and allow the same to be carry forward as per provisions of the Act and against this order the Revenue is in appeal before us.

4. The Ld. DR strongly supported the orders of the Assessing Officer and on the other hand, the Ld. Counsel for the assessee supported the order of the Ld. CIT(A). The Ld. Counsel for the assessee further submits

that if depreciation is not allowed the WDV of the assets should be carry forward. He submits that there is no justification in reducing the WDV of the assets and in not allowing depreciation to the assessee.

5. Heard rival submissions perused the orders of the authorities below.

6. The AO did not allow depreciation on the assets in the project of M/s Him Fresh Produce Company for the reason that the assessee did not claim depreciation in the original return filed placing reliance on the decision of Supreme Court in the case of Goetze India Limited vs. CIT (supra) and at the same time reduced the WDV of the assets while determining the carry forward of WDV of such assets. The Ld. CIT(A) allowed the claim for depreciation and carry forward of WDV of assets in view of Explanation 5 of section 32(1) which was inserted w.e.f. 01.04.2002 and applicable from the AY 2002-03, where allowance for depreciation was made mandatory even if the assessee did not claim depreciation in the return of income. We observe that the Ld. CIT(A) also placed reliance on the decision of Mumbai Bench of the Tribunal in the case of Ibi Kellog India Pvt. Ltd. vs. ITO. The Ld. CIT(A) held that the correct course of action should be to allow depreciation after computing the same on the block of assets as per provisions of the Act and in case the depreciation exceeds the business income then as per the provisions of section 72 of I.T. Act the Assessing Officer should allow the

depreciation to be carry forward for set off in succeeding assessment years. We agree with the view of the Ld. CIT(A) and this is the correct position of law. Therefore, we see no infirmity in the order of the Ld. CIT(A) in directing the AO to compute the depreciation and allow the same to be carried forward as per the provisions of the Act. Grounds raised by the Revenue are rejected.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10/06/2022

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 10.06.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi