

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1932/MUM/2021 (A.Y. 2014-15)

M/s. Owens Corning India Pvt. Ltd., Alpha Building, 7 th Floor Hiranandani Complex Powai, Mumbai – 400076 PAN: AAACO1739M	v.	ACIT -7(3)(1) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Ms. Megha Shah
Department by	:	Shri Nihar Ranjan Samal
Date of Hearing	:	05.07.2022
Date of Pronouncement	:	24.08.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-57, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.09.2021 for the A.Y.2014-15.

2. Brief facts of the case are, assessee filed its original return of income on 24.11.2014 declaring total income of ₹.90,26,17,260/-. The return

was duly processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

3. The assessee is engaged in manufacturing and trading of glass fiber reinforcement material in India and for the exports.

4. The assessee is in appeal before us raising following two grounds of appeal: -

"1.0 Re: Disallowance of amortization of the premium paid for the leasehold land of ₹.20,14,928

1.1 The Commissioner of Income-tax (Appeals) has erred in confirming the disallowance of ₹.20,14,928/ being the amortised amount of the premium paid for acquiring lease rights over a plot of land

1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the said amount amortised is deductible while computing its total income and the action of the Assessing Officer in this respect is not in accordance with law and the Commissioner of Income-tax (Appeals) ought to have held as such.

1.3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.

2.0 Re: Disallowance of depreciation on additions to the fixed assets made during the Assessment Year 2006-2007 of Rs. 7,86,917

2.1 The Commissioner of Income-tax (Appeals) has erred in confirming the disallowance of depreciation of Rs. 7,86,917/- (pertaining to the assets acquired during the Assessment Year 2006-2007) out of the total depreciation of Rs. 20,49,43,625/- claimed by the Appellant for the year under consideration.

2.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, it is entitled to claim depreciation of Rs. 7,86,917/- while computing its total income for the year and the action of the Assessing Officer in this respect is not in accordance with law and the Commissioner of Income-tax (Appeals) ought to have held as such.

2.3 The Appellant submits that the Assessing Officer be directed to allow depreciation as claimed by it and to re-compute its total income accordingly."

5. With regard to Ground No. 1 disallowance of amortization of premium paid for leasehold land and the assessee has claimed an amount of ₹.20,14,928/- as amortization of leasehold land and in support of the above claim assessee has filed decision of Hon'ble Gujarat High Court in the case of DCIT v. Sun Pharmaceuticals India Ltd., [(2009) 254 ITR 262 (Gujarat)] and decision of the Hon'ble Karnataka High Court in the case of CIT v. H.M.T. Ltd [(1993) 203 ITR 820 (kar)]. However, Assessing Officer by relying on the decision of Special Bench, Mumbai in the case of JCIT v. Mukund Ltd., [(2007) 106 ITD 231 (Mum)] and following the decision of Coordinate Bench in assessee's own case disallowed the amortization of premium claimed by the assessee.

6. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) also dismissed the same.

7. Ld. AR of the assessee fairly accepted that this issue is against the assessee and the similar issue is considered by the Coordinate Bench in assessee's own case in ITA.No. 461 and 849/Mum/2009 dated 16.03.2011 for the A.Y. 2004-05, decided this issue against the assessee which is reproduced below: -

"7.1 The Id counsel for the assessee, at the outset, referring to the order of the Tribunal in assessee's own case for Assessment Year 2001-02 submitted that this issue stands decided against the assessee where the Tribunal, following the decision of the Special Bench of the Tribunal in the case of Mukund Ltd reported in 106 ITD 23 has dismissed the ground raised by the assessee. He however, submitted that in the case of DCIT vs Sun Pharmaceuticals reported in 24 DTR 262 similar issue has been decided in favour of the assessee.

8 After hearing both the sides and in view of the decision of the Tribunal in assessee's own case in the immediately preceding assessment year on the same issue we hold that the CIT(A) is justified in confirming the disallowance of amortization of the premium paid for leasehold land amounting to Rs. 20,16,264/-. The ground raised by the assessee is accordingly dismissed."

8. Respectfully following the above said decision, we are also inclined the dismiss the ground raised by the assessee. Accordingly, Ground raised by the assessee is dismissed.

9. With regard to Ground No. 2 disallowance of depreciation, the Assessing Officer disallowed the depreciation in respect of addition to fixed assets as the assessee failed to produce any supporting documents for verification in the earlier Assessment Orders passed for the A.Y.2006-07 and 2011-12. Assessing Officer observed that the appeal filed by the assessee against order of the A.Y. 2006-07 is confirmed by the Ld.CIT(A) and assessee is in appeal before the ITAT, Mumbai.

10. In consequential effect of the same is hereby considered for the year under consideration. Accordingly, an amount of ₹.17,00,635/- being consequential amount of difference between depreciation claimed by the assessee and actually allowed in A.Y. 2006-07 is added to the total income of the assessee.

11. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) observed in his order that this issue is relating to original disallowance pertaining to A.Y. 2006-07. In that assessment year Assessing Officer disallowed depreciation as the assessee failed to produce the invoices with respect to additions made to the fixed assets. Aggrieved assessee preferred appeal before appellate authorities and travelled the issue upto ITAT and ITAT remitted back the issue to the file

of the Assessing Officer. In the set-aside proceedings the Assessing Officer after considering the submissions of the assessee and inquiries has observed as under:-

"5. While completing assessment in the case on 31.12.2009 the Assessing Officer disallowed depreciation of Rs.93,40,242/- claimed on the addition to fixed assets made during the previous year relevant to the assessment year 2006-07 for non furnishing of proper supporting documentary evidences. The Hon'ble Income tax Appellate Tribunal vide its order dated 08.05.2019 restored the issue to the file of the Assessing Officer. The assessee company made partial response on 19.04.2021 and requested further extension of time for making submissions. As the assessment is getting barred by limitation of time, further time is not possible to be granted to the assessee company and the same was informed vide letter dated 13.04.2021.

6. During the previous year pertaining to the assessment year 2006-07 the assessee company made total addition of Rs.6.72 crores towards fixed assets and claimed depreciation of Rs.93,40,242/-. In response to the letter issued the assessee company uploaded copies of invoices for purchase of fixed assets totalling to Rs.2.92 crores only. Hence depreciation is allowed for the additions to plant and machinery of Rs.2.92 crores only amounting to Rs.43,84,965/-."

12. Considering the above observations, Ld.CIT(A) observed that even after a lapse of almost 15 years, the assessee failed to produce the required invoices before the Assessing Officer and even at the fag end of time barring period asked for further time. Further, he observed that assessee had sufficient opportunity to comply with the requirement and it failed to avail the opportunity and also Assessing Officer granted relief to the assessee to the extent of invoices submitted by the assessee i.e. to

the extent of ₹.2.92 crores and directed the Assessing Officer to allow consequential effect in A.Y. 2014-15 to that extent and he partly allowed the ground raised by the assessee. Aggrieved assessee is in appeal before us.

13. At the time of hearing, Ld. AR submitted that in A.Y. 2006-07 ITAT remitted this issue back to the file of the Assessing Officer to examine the additional evidences submitted by the assessee. In this regard he brought to our notice Para No. 6.3 of the ITAT order and prayed that the depreciation claimed by the assessee may be allowed.

14. On the other hand, Ld. DR objected and relied on the findings of the tax authorities below.

15. Considered the rival submissions and material placed on record. We observe that in A.Y. 2006-07 Assessing Officer observed that assessee has claimed depreciation of ₹.93,40,242/- and when the assessee was asked to submit the supporting evidences in support of the above claim, assessee failed to furnish the supporting evidences such as bills, date on which put to use etc. However, Assessing Officer itself observed that assessee has intimated Excise Authority regarding loss of materials due

to heavy rain and flood in Taloja Factory in July 2005, observing that bills are mostly kept in head office situated at Bombay and the assessee had acquired most of the assets after the date of flood, the Assessing Officer declined to accept the arguments of the assessee that the documentary evidence are not traceable and accordingly, he sustained the disallowance of depreciation. Further, in appeal before ITAT assessee has submitted additional evidences being photocopies of sample invoices placed at Page No. 367-383 of the Paper Book and the same was remitted by ITAT to the file of the Assessing Officer to verify the same and allow the claim of the assessee after giving proper opportunity of being heard to the assessee.

16. We observe that in the subsequent proceedings Assessing Officer had verified the additional evidences submitted by the assessee and in fact the assessee filed the additional evidences sample invoices only. However, assessee could not file complete details of additions made to fixed assets during the A.Y. 2006-07 before the Assessing Officer. Fairly, Assessing Officer has allowed the claim of the assessee to the extent of bills submitted by the assessee and rejected the claim of the assessee without there being any evidences. We also observe that the Assessing Officer in Assessment Order for the A.Y. 2006-07 has observed that most

of the fixed deposits were purchased after date of flood. However, assessee has not submitted anything on record before us that the assessee failed to submit the bills relating to the assets which is purchased by the assessee before the date of flood. The assessee prays that the depreciation may be allowed without there being any evidences on record does not justify. Therefore, in the absence of any evidence or justification we are inclined to accept the findings of the Ld.CIT(A). Accordingly, ground raised by the assessee is dismissed.

17. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 24th August, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 24.08.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum