IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH
(Virtual Court)

**Before: Shri Mahavir Prasad, Judicial Member**
**And Shri Amarjit Singh, Accountant Member**

**ITA Nos. 2401 & 2402/Ahd/2018**
**Assessment Year 2013-14 & 2014-15**

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| The ACIT,<br>Sabarkantha Circle,<br>Himatnagar-383001<br>(Appellant) | Vs | Sabarkanta Distt Co-op Milk Producers Union Ltd. Sabar Dairy,<br>At & PO Boriya,<br>Himatnagar,<br>Distt-Sabarkantha-383001<br>PAN: AAAAS5265L<br>(Respondent) |

**C.O. No. 136/Ahd/2019**
**(in ITA No. 2402/Ahd/2018 )**
**Assessment Year 2014-15**

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| Sabarkanta Distt Co-op Milk Producers Union Ltd.<br>Sabar Dairy,<br>At & PO Boriya,<br>Himatnagar,<br>Distt-Sabarkantha-383001<br>PAN: AAAAS5265L<br>(Appellant) | Vs | The ACIT,<br>Sabarkantha Circle,<br>Himatnagar-383001<br>(Respondent) |

**Revenue by: Shri Aarsi Prasad, CIT-D.R.**
**Assessee by: Shri Yogesh Shah, A.R.**

Date of hearing : 11-12-2020
Date of pronouncement : 12-01-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two appeals filed by revenue for A.Y. 2013-14 & 2014-15 and cross objection filed by assessee A.Y. 2014-15 arise from order of the CIT(A)-2, Ahmedabad dated 24-09-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

**ITA No. 2401/Ahd/2018 A.Y. 2013-14**

2. The revenue has raised following grounds of appeal:-

*"1. The Ld. CIT(A) has erred in law in deleting the disallowances u/s 80P(2)(d) of Rs.2,32,84,772/- disregarding the provisions of section 80-AB of the IT Act.*

*2. The Ld. C1T(A) has erred in law and on facts in deleting the disallowances of additional depreciation of Rs.3,21,16,870/-claimed on account of Plant & Machinery.*

*3. The Ld. CIT(A) has erred in law and on facts in deleting the disallowances of additional depreciation on Milk CANs & Equipments of Rs.40,36,716/-."*

3. The assessee has filed return of income on 29th Sep, 2013 declaring total income of Rs. 1,17,39,180/- for the year under consideration. The case was subject to scrutiny assessment and notice u/s. 143(2) was issued on 2nd Sep, 2014. Assessment u/s. 143(3) of the Act was finalized on 4th March, 2016 and total income was assessed at Rs. 7,60,88,277/-. The Assessing Officer has made disallowance u/s. 80P(2)(d) of the Act and also disallowed the additional claim of depreciation on account of plant and machinery.

However, the ld. CIT(A) has deleted the disallowance and addition made by the Assessing Officer. The relevant facts pertaining to the issues are discussed while adjudicating the grounds of appeal as follows.

**Ground No. 1 (Deleting the disallowance u/s. 80P(2)(d) of Rs. 2,32,84,772/-)**

4. During the course of assessment, the Assessing Officer observed that assessee has made investment in shares and securities to the amount of Rs. 7,91,89,690/- and also borrowed funds to the amount of Rs. 185.81 crores as on 31st March, 2013 and claimed total interest expenses of Rs. 48,00,48,638/- in the Profit and Loss Account. The Assessing Officer further noticed that assessee has claimed exempted interest of Rs. 47,29,522/- and dividend income of Rs. 1,85,55,250/- totaling to Rs. 2,32,84,772/- u/s. 80P(2)(d) of the act. On query, the assessee explained that it has received interest income from investment out of the amount received on account of sale of milk and milk cans and the dividend income has been earned from investment made out of own fund. The Assessing Officer has not accepted the explanation of the assessee stating that assessee has not maintained separate account for each issue and also failed to prove direct nexus of the sources of fund and its investment made during the year. After referring various judgments at page no. 5 and 10 of the assessment order, the Assessing Officer stated that assessee was not qualified for exemption u/s. 80P(2)(d) of the Act and the claim of exempted interest and dividend income totaling of Rs. 2,32,84,772/- was disallowed and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before eth ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that similar issue for assessment year 2009-10 has been adjudicated in favour of the assessee by the Co-ordinate Bench of the ITAT and the Hon'ble Jurisdictional High Court. The relevant part of the decision of ld. CIT(A) is reproduced as under:-

> *"3.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made the disallowance of claim of interest of Rs. 47,29,522/- and dividend income of Rs.1,85,55,250/-totalling to Rs.2,32,84,772/- u/s. 8OP(2)(d) of the Act stating that the above income is in the nature of income from other sources, and therefore, not allowable u/s. 80P(2)(d) of the I. T. Act, 1961.*
> *3.4. The appellant on the other hand has stated that the issue has come up in the A. Y. 2009-10 and has been decided by the Honourable ITAT in appellant's favour that interest and dividend earned on investment is allowable u/s. 80P{2) (d) of the Act. The order of Honourable ITAT has been affirmed by the Honourable Gujarat High Court in Tax Appeal No.473 of 2014. The CIT(A) has deleted the similar disallowance in all preceding years. The Honourable ITAT in the immediate preceding year in A. Y. 2012-13 has also upheld the decision made by CIT(A).*
> *3.5. In view of the above and considering the decision of Honourable ITAT, Ahmedabad 'A' Bench and Honourable Gujarat High Court, the disallowance u/s. 80P[2](d) made by the AC is* ***deleted.*** *The ground of appeal is accordingly* ***allowed."***

6. During the course of appellate proceedings before us, the ld. counsel has submitted that identical issue was contested in favour of the assessee by the Co-ordinate Bench of the ITAT in the case of assessee itself for assessment year 2009-10 vide ITA No. 2613/Ahd/2012 and also in assessment year 2012-13 vide ITA No. 1905/Ahd/2016. The ld. counsel has also submitted that Hon'ble Jurisdictional High Court has also affirmed the finding of the ITAT for assessment year 2009-10 vide Tax Appeal 473 of 2014 and for assessment year 2012-13 vide Tax Appeal No. 1312 of 2018. The ld. Departmental Representative is fair enough not to contradict these undisputed facts that the case of the assessee is covered by the judicial pronouncement as referred by the ld. counsel.

7. Heard both the sides and perused the material on record. With the assistance of ld. representatives, we have gone through he decision of Co-ordinate Bench of the ITAT in assessee's own case vide ITA No. 2613/Ahd/2012 for assessment year 2009-10 as follows:-

> *"11. After hearing both the parties and perusing the record, we find that AO while disallowing the 50% of expenditure claimed by the assessee was of the view that interest expenses incurred by the assessee on borrowed funds might have been used for the purpose of making investment, income of which was claimed as deduction u/s. 80P(2)(d) of the Act. Before Ld. CIT(A) the assessee's submission was that they are having sufficient funds of Rs. 50.19 crore as on 31.03.2009 in the form of capital of Rs. 10.19 crore and reserve and surplus of Rs. 40 crore against which the fixed deposits with cooperative banks and societies were of Rs. 36.28 crore only. Since interest free funds were more than the investment made in such deposits with cooperative banks and since the funds were mixed funds the presumption was that the said deposits were made out of own non interest bearing funds. Reliance was also placed on the decision of Supreme Court in the case of Mungal Sales Corporation 298 ITR 298 and decision of Mumbai High Court in the case of Reliance Utilities and Power Ltd 313 ITR 340. Keeping these facts and the case laws in view, Ld. CIT(A) held that it was not required to look into the source of the funds. The plain language of section did not speak of any such adjustment. The only requirement was that income should be received from investment in co-operative societies and co-operative banks. Since in the present case, it was undisputed fact that income claimed u/s. 80P(2)(d) was received from the investment made in co-operative societies and co-operative banks, therefore assessee was eligible for deduction u/s. 80P(2)(d) of the Act. We further find that even otherwise since assessee was having mixed funds and the interest free funds were more than investment in co-operative banks and co-operative societies no disallowance was called for from eligible deduction u/s 80P(2(d) of the Act. Therefore, we feel no need to interfere with the order passed by Ld. CIT(A) and the same is hereby upheld."*

During the year as submitted by the assessee in its submission before the ld. CIT(A) discussed at page no. 15 of the CIT(A)'s order that assessee was having its own fund amounting to Rs. 77.52 crores as against the investment of Rs. 42.54 crores, therefore, respectfully following the decision of the Co-ordinate Bench as elaborated above which was affirmed by the Hon'ble Jurisdictional High Court of Gujarat vide tax appeal no. 473 of 2014, we do not find any infirmity in the decision of ld. CIT(A). Accordingly, this ground of appeal of the Revenue is dismissed.

**Ground No. 2(Deleting the disallowance on additional deprecation of Rs. 3,21,16,870/- claimed as plant and machinery other than milk can equipments)**

8. During the course of assessment, the Assessing Officer noticed that assessee has claimed additional depreciation amounting to Rs. 3,21,16,870/- equal to 10% of the cost of the machinery purchased and put to use for the period less than 180 days in the F.Y. 2011-12. The Assessing Officer stated that as per provision of section 32 additional deprecation is allowable on the plant and machinery only for the year in which the capacity expansion has taken place and not in the subsequent year. The Assessing Officer was of the view that additional deprecation is allowable only for the year in which the capacity explanation have taken place and accordingly, disallowed the balance 10% claim for the current year.

9. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that the assessee's case is covered by the decision given in assessee's own case by the Co-ordinate Bench of the ITAT Ahmedabad vide ITA no. 1905/Ahd/2016 dated 6th June, 2018. The relevant part of the decision of ld. CIT(A) is reproduced as under:-

> *"4.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made the disallowance of 10% of additional depreciation on plant and machinery purchased and put to use for less than 180 days in the F. Y. 2011-12. The AO has held that additional depreciation is allowable only for the year in which the capacity expenses have taken place and accordingly disallowed the balance 10% claimed in the current year.*
> *4.4. The appellant on the other hand has stated that the appellant's case is covered by the decision given in appellant's own case for A. Y. by CIT(A) - 4, Ahmedabad and the same has been upheld by Honourable ITAT, Ahmedabad vide order in ITA No.l905/Ahd/2016 dated 06/06/2018. The relevant findings of the Honourable ITAT is as under:-*
>
> > *"14. Brief Facts of the case are that the assessee has made addition to its plant & machinery which is eligible for grant of additional depreciation under section 32(l)(ii) of the Act. This plant & machinery was used for less than 180 days in the preceding year.*

*The assessee claimed that the additional depreciation for remaining period of 180 days ought to be allowed in subsequent year i.e. in the present assessment year. The Id.AO was of the view that such additional depreciation is admissible one time, and therefore, the assessee should have installed the plant & machinery at the beginning of the year so that it could claim additional depreciation in the year of installation itself. Accordingly, 50% unclaimed depreciation has been disallowed to the assessee. On appeal, the ld.CIT(A) after putting reliance on the order of the ITAT allowed the claim of the assessee.*

*15. With the assistance of the Id. representatives, we have gone through the record carefully. We find that this issue has been examined by the ITAT, Delhi Bench in the case of DCIT Vs. Cosmos Films Ltd., 24 taxmatm.com 189 wherein one of us (Judicial Member) is party to the order. ITAT has examined this aspect in detail and held that any claim of additional depreciation on account of non-user of the machinery over a period of 180 days or more should be claimed in the next assessment years.*

*The discussion made by the ITAT has been reproduced by the ld.CIT(A), and it is worth to take note as under:*

*"17. We have heard both the sides on this issue. Section 32(1) (iia) inserted by Finance (No. 2) with effect from 1.4.2003. In speech of Finance Minister this clause was inserted to provide incentive for fresh investment in industrial sector. This clause was intended to give impetus to new investment in setting up a new industrial unit or for expanding the installed capacity of existing units by at least 25 % thereafter these provisions were amended by the Finance (No.2) Act of 2004 w.e.f. 1.4.2005 and provided that in the case of any machinery or plant which has been acquired after the 31 st day of march, 2005 by an assessee engaged in the business of manufacture of production of any article or thing a further sum equal 15 % of actual cost of such machinery or plant shall be allowed as deduction under clause (ii) of section 33(1). This additional allowance u/s 32(1) (iia) is made available as certain percentage of actual cost of new machinery and plant acquired and installed. This provision has been directed to the setting up new industrial undertaking making or for expansion of the industrial undertaking by way of making more investment in capital goods. Thus, these are incentives aimed to boost new investments in setting up and expanding the units. The proviso to section 32(1) (iia) restricts the benefits in respect of following- 'Provided that no deduction shall be allowed in respect of_ (A) Any machinery or plant which, before its installation by the assesses was used either within or outside India by any other person; or (B) Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house or (C) Any office appliances or road transport vehicle, or (D) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "profits and gains of business or profession of any previous year." Thus, this incentive in the form of additional sum of depreciation is not available to any plant or machinery which been used either within India or outside India by any other person or such machinery and plant are installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house or any office /appliances or road transport vehicles, or any machinery or plant the whole of actual cost of which is allowable as deduction (where by wau of depreciation or otherwise) in computing under the head "Profit and gains of business or profession" of any one prevision year. Thus, the intension was not to deny the benefit to the assets, who have acquired or instated new machinery or plant. The second proviso to section 32(1) (ii) restricts the allowances only to 50% where the assets have been acquired and part to use for a period less than 160 days in the year of acquisition. This restriction is only on the basis of period of use. There is no restriction, that balance of one time incentive in the form of additional sum of depreciation shall not be available in the subsequent year. Section 32(2) provides for a carry forward set up of unabsorbed depreciation. This additional benefit in the form of additional allowance u/s 32(l)(iia) is one time benefit to*

> *encourage the industrialization and in view of the decision of Hon'ble Supreme Court in the case of Bajaj Tempo vs. CIT, cited supra, the provisions related to it have to be constructed reasonably, liberally and purposive to make the provision meaningful while granting the additional allowance. This additional benefit is to give impetus to industrialization and the basic intention and purpose of these provisions can be reasonably and liberally held that the assessee deserves to get the benefit in full when there is no restriction in the statute lo deny the benefit of balance of 50% when the new plant and machinery were acquired and use for less than 180 days. One time benefit extended to assesses has been earned in the year of acquisition of new plant and machinery. It has been calculated @ 15% but restricted to 50% only on account of usage of these plant & machinery in the year of acquisition. In section 32(1 (iia) the expression used is "shall be allowed". Thus the assessee had earned the benefit as soon as he had purchased the new plant and machinery in full but it is restricted to 50% in that particular year on account of period of usages. Such restrictions cannot divest the statutory right, Law docs not prohibit that balance 50% will not be allowed in succeeding year. The extra depreciation allowable u/s 32{1) (iia) in an extra incentive which has been earned and calculated in the year of acquisition but restricted for that year to 50% on account of usage. The so earned incentive must be made available in the subsequent year. The overall deduction of depreciation u/s 32 shall definitely not exceed the total cost of plant machinery. In view of this matter, we set aside the orders of the authorities below and direct to extend the benefit,"*
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> *16. Respectfully following the order of the 1TAT, we are of the view that the ld.CIT(A) has rightly deleted the disallowance and has rightly directed the AO for grant of remaining additional depreciation in this assessment year. We do not find any error in finding of ld.CIT( A) on this ground of appeal. Accordingly, it is rejected."*
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> *4.5. In view of the above and respectfully following the decision of Honourable ITAT, the disallowance of additional depreciation made by the AO is* ***deleted.*** *The ground of appeal is accordingly* ***allowed."***

10. During the course of appellate proceedings before us, the ld. counsel has contended that the issue in appeal is covered by the decision of the Co-ordinate Bench of the ITAT in the case of the assessee itself for assessment year 2012-13 vide ITA No. 1905/Ahd/2016. The ld. Departmental Representative is fair enough not to controvert these undisputed facts that the issue is covered in favour of the assessee.

11. Heard both the sides and perused the material on record. With the assistance of ld. representatives, we have gone though the decision of the Co-ordinate Bench of the ITAT in the case of the assessee itself for assessment year 2011-12 as elaborated above in the finding of the ld. CIT(A) and considered that the issue in the instant appeal is covered by the aforesaid

decision of the ITAT. Respectfully following the decision of ITAT, we do not find any error in the decision of ld. CIT(A). Therefore, this ground of appeal of the revue is also dismissed.

**Ground No. 3(Deleting disallowance of additional depreciation on milk equipment of Rs. 40,36,716/-)**

12. During the course of assessment the Assessing Officer noticed that assessee has claimed additional depreciation on milk cans of Rs. 37,28,661/- , on equipment of Rs. 2,45,597/- and on equipment (cattle feed plant) of Rs. 62,548/-. The Assessing Officer was of the view that aforesaid equipments were not of the category of plant and machinery. The Assessing Officer stated that mil cans were used for collecting and storage facilities and similarly the equipment were part of laboratory testing, containers were for artificial insemination by which no production capacity was enhanced cannot be categorized as plant and machinery for the purpose of claiming additional depreciation. Therefore, additional deprecation claimed on milk cans and equipments of Rs. 40,36,716/- (37,28,661+2,45,597+62,458) was disallowed and added to the total income of the assessee.

13. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee stating that similar issue was contested in favour of the assessee by the Co-ordinate Bench of the ITAT vide ITA No. 1905/Ahd/2016 dated 9th June, 2018. The relevant part of the decision of ld. CIT(A) is reproduced as under:-

> *"5.3. 1 have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made the disallowance of additional depreciation of Rs.40,36,716/- on milk cans, Rs,2,45,597/-claimed on equipments and Rs.62,458/- claimed on equipments (Cattle Feed Plant) stating that the equipments which are part of laboratory testing, containers for Artificial*

*Insemination by which no production capacity is enhanced cannot be categorized as plant S. machinery for the purpose of claiming additional depreciation.*
*5.4. The appellant on the other hand has stated that the appellant's case is covered by the decision given in appellant's own case for A. Y. 2012-13 by CIT(A) - 4, Ahmedabad and the same has been upheld by Honourable ITAT, Ahmedabad vide order in ITA No.l905/Ahd/2016 dated 06/06/2018. The relevant findings of the Honourable ITAT is as under:-*

> *"9. Ground No.2; In this ground, grievance of the Revenue is that the ld.CIT(A)) has erred in deleting disallowance of additional depreciation of Ks.33,80,446/-. It is pertinent to mention that the assessee has claimed additional depreciation on milk canes. The Id.AO has disallowed the claim of the assessee on the ground that such canes were used for transporting the milk from village to plant, and therefore, does not form part of plant & machinery. The ld.CIT(A) deleted the disallowance by observing that the AO himself treated milk cans as plant and allowed depreciation at the rate of 15%, In other words, he has allowed the depreciation at normal rates and refused to allow additional depreciation. According to the Id.CIT(A) expression "plant" has been defined in section 43(3) which reads asunder: Section 43(3) : "Plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession (but does not include tea bushes or livestock or buildings or furniture and fittings)*
> *10. After considering the above definition, the ld.CIT(A) has deleted the disallowance.*
> *11. With the assistance of the ld. representatives, we have gone through the record carefully. A perusal of the order of the ld.CIT(A) would indicate that there is no distinction between the expression "plant" for allowing normal depreciation vis-a-vis additional depreciation on that item. The ld AO has created an artificial distinction on that ground. After going through the order of the ld.CIT(A) we are satisfied that the ld.CIT(A) has examined the issue with all possible angle, and thereafter held that depreciation is admissible to the assessee. Therefore, we do not find any merit in this ground of appeal. It is rejected,"*

*5.5. In view of the above and respectfully following the decision of Honourable 1TAT, the disallowance of additional depreciation made by the AO is* ***deleted.*** *The ground of appeal is accordingly allowed."*

14. During the course of appellate proceedings before us, ld. counsel has contended that identical issue on similar facts was adjudicated in favour of the assessee by the Co-ordinate Bench of the ITAT for assessment year 2012-13 vide ITA No. 1905/Ahd/2016 dated 6th June, 2018. On the other hand, ld. counsel is fair enough not to controvert these undisputed facts that the issue has been decided in favour of the assessee by the Co-ordinate Bench of the ITAT as mentioned above. Respectfully following the decision of the Co-ordinate Bench as elaborated in the finding of ld. CIT(A), we do not find any infirmity and the same is dismissed.

15. In the result, the appeal of the revenue is dismissed.

**ITA No. 2402/Ahd/2018 A.Y. 2014-15**

16. As the facts and issue involved in grounds of appeal vide ITA No. 2401/Ahd/2018 Assessment Year 2012-13 are similar as in ITA No. 2402/Ahd/2018 Assessment Year 2013-14 therefore after applying the decision adjudicated vide ITA No. 2401/Ahd/2015 as supra in this order, this appeal of the revenue stands dismissed.

**Cross Objection No. 136/Ahd/2019 A.Y. 2013-14**

17. The assesse has filed cross objection against the decision of ld. CIT(A) in confirming the interest charged u/s. 234A of the Act of Rs. 4,71,300/-. During the course of appellate proceedings before us, the ld. counsel has brought to our notice that return was filed within due date, therefore, no interest is required to be charged. The ld. counsel has referred pager no. 26 to 28 of the paper pertaining to copy of acknowledgement of original return of income and original statement of total income for assessment year 2014-15 placed in the paper book. The ld. counsel has submitted that the assessee was required to furnish form no. 3CEB, therefore, due date of filing of return of income u/s. 139(1) of the Act was 30$^{th}$ Nov, 2014.

18. Heard both the sides and perused the material on record. We consider that this issue is required to be verified by the Assessing Officer after examination of the material placed in the paper book. Therefore, we restore this issue to the file of Assessing Officer for deciding afresh as directed

above. Accordingly, this cross objection filed by the assessee is allowed for statistical purposes

19. In the combined result, both the appeals filed by the revenue are dismissed and cross objection filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12 -01-2021

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| **Sd/-** | **Sd/-** |
| **(MAHAVIR PRASAD)** | **(AMARJIT SINGH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

**Ahmedabad : Dated 12/01/2021**

**आदेश की प्रतिलिपि अग्रेषित** / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद