

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.6965/DEL/2017
Assessment Year 2013-14

Garg Acrylic Ltd., A-50/1, Wazipur Industrial Area, Delhi, New Delhi.	v.	DCIT, Circle-10(1), New Delhi.
TAN/PAN: AAACG3332N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, CA & Shri Rahul Chaurasia, CA		
Respondent by:	Shri Gurmil Singh, Sr.DR		
Date of hearing:	06	01	2021
Date of pronouncement:	22	01	2021

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 07.09.2017 passed by Commissioner of Income Tax (Appeals)-XXXV, New Delhi for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2013-14. In the grounds of appeal, the assessee has raised grounds as under:

"1. The Ld. CIT(A) erred in confirming the disallowance of Depreciation claimed on the machineries purchased at the end of the year amounting to Rs. 36,35,372/-.

a) Because the assessee has submitted bills of machinery purchased on 26.02.2013 which were installed on 30.03.2012

by engineers of Voltas Ltd. a unit of Tata and the proof of visit for installation and commissioning of engineers were submitted, thus the machine was not only installed & commissioned but also subjected to trial run by Engineers of TATA, that was ignored by the ld. CIT(A).

b) Because the certificate of Excise Commissioner dt. 13.05.2013 stated that Plant & Machinery were found to be installed on the said date and not the date of installation of such Plant & Machinery, as relied by ld. CIT(A).”

2. The brief facts qua the issue involved are that the assessee is engaged in the business of manufacturing and trading of yarns and garments. During the year, the assessee has made addition in the Fixed Assets to the tune of Rs.227,43,20,548/-, out of which machineries amounting to Rs.2,08,36,413/- were purchased in the month of February and March. The details of which are as under:

Fixed Assets under head	Purchased from	Date of Bill	Date of Put to Use	Amount of bill
Plant & Machinery	Lakshmi Machine Works Limited	26.02.2013	30.03.2012	83,69,030
Plant & Machinery	Lakshmi Machine Works Limited	26.02.2013	30.03.2012	83,69,030
Plant & Machinery	Lakshmi Machine Works Limited	07.03.2013	30.03.2012	40,98,353
Total				2,08,36,413

3. The Assessing Officer has held that, since certificate has been issued by Superintendent of Central Excise which were dated 13.05.2013 and 24.07.2013, which falls in the next financial year, therefore, it goes to prove that the said machinery have not been put to use for the year ending 31st March, 2013. Further the fixed assets have been capitalized on the second last day of the year just to claim depreciation. Accordingly, he disallowed depreciation amounting to Rs.34,46,372/-.

4. Ld. CIT (A) has confirmed the said finding of the Assessing Officer.

5. Before us, the ld. counsel for the assessee submitted that, not only the machines have been purchased in the month of February and 1st week of March, but they were duly installed and put to use on 30th March, 2012, which is evident from purchase invoice placed in the paper book and certificate of installation by M/s. Voltas Ltd on 30th March, 2012. The copy of which has been placed in the paper book at pages 44 and 45, who were authorized agent for installation and commissioning of their machines. The invoice for installation and commissioning was as under:

Invoice No.	Date	Amount	Description
8002047552	30.03.2013	Rs.9303	Installation and Commissioning of LR9AXL i.e. bill No.11211203303 & 1211203307 of LMW

8002048005	30.03.2013	Rs.9303	Installation and commissioning of LH-15 i.e. Bill No. 1111201285 of LMW
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5. The machines were fully installed and commissioned and was put to use on 30th March, 2013, hence the plants/machines were eligible for depreciation as per the Income Tax Rules. In support, he has strongly placed reliance upon the judgment of Hon'ble Delhi High Court in the case of **Stitchwell Qualitex (RF) vs. ITO & Another** as reported in **2015 (9) TMI 850** and **National Thermal Power Corporation vs. CIT** reported in **(2013) 357 ITR 253 (Del)**, wherein the Hon'ble Jurisdictional High Court has held that the expression 'used for the purpose of business' in Section 32 of the Act is to be interpreted to include a case where the asset is kept ready for use even if actually it is not put in use. This factum of installation and commissioning was specifically contended by the Assessing Officer and ld. CIT (A) in the replies filed before them. The copy of which is appearing at pages 39 to 47 which is a reply filed before the Assessing Officer and the copy of written submission filed before the ld. CIT(A) are at pages 1 to 38 and relevant pages 30 and 31.

6. On the other hand, ld. DR strongly relied upon the finding of the Assessing Officer and ld. CIT (A) and submitted that the Central Excise Department has certified the commissioning in the month of May, therefore, the asset was

not put to use in the relevant financial year.

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned order as well as material placed before us, we find that it is an undisputed fact that the assessee had purchased machines from M/s. Lakshmi Machine Works Limited on 26.02.2013 and 07.03.2013. As per the invoice and certificate issued by M/s. Voltas Limited, it has been certified that the machines were installed and commissioned on 30.03.2013. Thus, from these evidences, it is quite evident the machines were not only installed but ready to use as on 30.03.2013. Once this is an accepted position, then in view of the judgment of the Hon'ble Jurisdictional High cited supra, if the assets in the form of machinery equipment are kept ready for use, then same is eligible for depreciation as per the Income Tax Rules. In NTPC vs. CIT (supra), the Hon'ble High Court held that two conditions are necessary to be fulfilled before an allowance by way of depreciation under Section 32 of the Act can be granted to the Assessee. The first is ownership of the asset and the second, the user of the assets for the purposes of the business. The Court on the facts of the said case rejected the stand of the Revenue that the machinery and equipment had not been put to actual use and that it would not be enough if they were "kept ready for use". The Court referred to a large number of decisions of the High Courts and held that the expression "**used for the purpose of business**" in Section 32 of the Act was interpreted to include a case where the asset is

kept ready for use but is not actually put to use. These judgements included, **Whittle Anderson Ltd. v. CIT (1971) 79 ITR 613 (Bom); CIT v. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297 (Del); CIT v. Vayithri Plantations Ltd. (1981)128 ITR 675 (Mad) and CIT v. Refrigeration and Allied Industries Ltd. (2001) 247 ITR 12 (Del)**. Further the Hon'ble Delhi High Court in the case of **CIT vs. Integrated Technologies Ltd. in ITA No.530/2011** vide judgment and order dated 16th December, 2011 upheld the similar principle that it is not necessary that the plant and machinery owned by the assessee should be actually put to use in the relevant accounting year to justify the claim of depreciation and that even if the plant and machinery or other asset is kept ready for use in the assessee's business, the assessee would be entitled to depreciation. Respectfully following the ratio and principle laid down by the Hon'ble Jurisdictional High Court, we hold that assessee is eligible for depreciation and same is directed to be allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 22nd January, 2021.

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

DATED: 22nd January, 2021

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER