

ITAT allowed additional dep. on “visicooler” installed by cold drink manufacturer at distributor’s place

Summary – The Kolkata ITAT in a recent case of Bengal Beverages (P.) Ltd., (the Assessee) held that where 'Visicooler' was installed by manufacturer of cold drink, at distributor's or retailer's premises so as to ensure that cold drink served chilled to ultimate consumer, same would tantamount to usage of 'visicooler' for purpose of business and, thus, additional depreciation was to be allowed on 'visicooler'

Facts

- The assessee, company was engaged in the business of manufacture of soft drinks, generation of electricity through wind mill and manufacture of pet bottles for packing of beverages. The assessee had installed visicoolers at distributors premises so as to deliver product to ultimate consumer in its consumable form, i.e., chilled form. The assessee claimed additional depreciation on Visicooler.
- The Assessing Officer disallowed the claim of additional depreciation. He observed that these Visicoolers were kept at distributors premises and not at the factory premises of the assessee company. He held that assessee was not carrying out manufacturing activity on the product of the retailer at retailer's premises and merely chilling of aerated water could not be termed as manufacturing activity and even that chilling job the activity of the retailer and not of the assessee.
- On appeal, the Commissioner (Appeals) observed that section 32 grants deduction on account of depreciation. The depreciation shall be allowed if plant owned by the assessee and used for the purposes of business or profession. Save and except these two conditions no further or additional conditions were required to be fulfilled by an assessee so as to claim deduction by way of depreciation. It nowhere provides that the asset had to be used by the assessee in its own premises by itself. The expression for the 'purposes of business' as used in the act had a wider connotation. In order to prove that an asset was used 'for the purpose of business' it was not necessary to prove the first degree nexus between the 'use of asset' and 'its use by the assessee himself'. So long as the use of the asset, directly or indirectly, benefits or enables an assessee to carry on its business, it would be sufficient to satisfy the criteria of 'use for the purpose of business'. Therefore, he held that the reason cited by the Assessing Officer for disallowing the claim of additional depreciation did not hold any water. The assessee's contention that usage of visicooler at the distributor's premises so as to ensure that the 'cold' drink was served 'cold' to the ultimate consumer tantamount to usage in the course and for the purposes of business was upheld by Commissioner (Appeals).
- On revenue's appeal to the Tribunal:

Held

- A close and careful perusal of the provision shows that the benefit of additional depreciation is available to an assessee engaged in the business of manufacture of article or thing upon the actual cost of plant & machinery. It is therefore clear that the benefit is available on the plant & machinery only to those assessees who are manufacturers and it is not restricted to plant & machinery used for

manufacture or which has first degree nexus with manufacture of article or thing. The second condition cited by the Assessing Officer in the impugned order is not borne from the provisions of section 32(1)(iia). The conditions laid down in section 32(1)(iia) is that if the assessee is engaged in manufacture of article or thing then it is entitled to additional depreciation on entire additions to plant & machinery provided the items of addition does not fall under any of the exceptions provided in clauses (A) to (D) of the proviso. In the present case the assessee is engaged in the business of manufacture of cold drinks. This fact has not been disputed by the Assessing Officer. The Assessing Officer has categorically observed that the assessee's nature of business is manufacture of cold drinks. Therefore, the assessee is legally entitled to avail the benefit of additional depreciation under section 32(1)(iia). The "visicooler" is a "plant & machinery". The said item falls within the category of "plant & machinery" as laid down in the I.T. Rules, 1962. The "visicooler" also does not fall within the exceptions provided in clauses (A) to (D) of the proviso to section 32(1)(iia).

- The assessee is in the business of manufacturing and sale of cold drinks. Since the assessee was situated at a long distance and the product had to be sold at long distance, the cold drinks becomes hot due to the humid weather. It is a known fact that soft drink, could not be consumed in hot state, whereas it is preferred by majority of customers as a cold drink. So, the assessee, in order to sell its final product to the customers, in various parts of the state required to give the drink, in cold state for which the assessee had purchased, tool, to keep the same in cool condition by the machine called 'Visicooler'. The test laid down by Supreme Court in the case of *Scientific Engineering House (P.) Ltd. v. CIT* [\[1986\] 157 ITR 86/\[1985\] 23 Taxman 66](#), was: Did the article fulfil the function of a plant in the assessee's trading activity? Was it a tool of his trade with which he carried on his business? If the answer was in the affirmative, it would be a plant.
- When the aforesaid test is applied in the case of Visicooler, the answer is in the affirmative, that is, the Visicooler was a tool which was necessary for carrying out, the business of the assessee, therefore, there is no any infirmity in the order of Commissioner (Appeals). Hence, the order passed by Commissioner (Appeals) is confirmed.