

**(2016) 09 MAD CK 0110**

**MADRAS HIGH COURT**

**Case No:** T.C.A. No. 624 of 2016.

M/s. Dinamalar, Tirunelveli -  
Appellant @HASH The  
Income-Tax Officer, Income Tax  
Department, Ward II(1),  
Tirunelveli

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 2, 2016

**Acts Referred:**

- Income Tax Act, 1961 - Section 32

**Citation:** (2016) 389 ITR 94

**Hon'ble Judges:** S. Manikumar and D. Krishna Kumar, JJ.

**Bench:** Division Bench

**Advocate:** Mr. S. Sridhar, Advocate, for the Appellant; Mr. M. Swaminathan, Advocate, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

**S. Manikumar, J.** - Tax Case Appeal is directed against the order dated 14.01.2016 made in I.T.A. No. 2829/Mds/2015, for the assessment year 2011-2012, in the matter of M/s. Dinamalar, Tirunelveli, by which, the Income Tax Appellate Tribunal, "B" Bench, Chennai, has dismissed the appeal filed by the revenue.

2. Brief facts leading to the appeal are that the appellant-assessee is a firm engaged in the business of publication of Daily Newspaper and filed its return of income for the assessment year 2011-12, on 21.03.2013, admitting a total income of Rs. 40,69,56,311/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 and subsequently, the case was selected for scrutiny under CASS. The Assistant Commissioner of Income tax, Circle-1, Tirunelveli, issued a notice, under Section 143(2), on 08.08.2013. Subsequently, after transfer of the case, another

notice under Section 142(1) has been issued on 18.11.2013. In response to the same, the assessee's authorised representative Shri A. Muthu, Internal Auditor appeared and produced books of accounts, copy of bank statements and other details. After examination of the details and discussion with him, the assessment is completed making the following additions,

(a) Disallowance of excess Depreciation Rs. 1,80,229/-.

(b) Disallowance of excess Depreciation Rs. 17,13,508/- and Rs. 9,01,181/-.

(c) Disallowance of Additional depreciation Rs. 19,96,405/-.

3. As regards the claim of depreciation on electrical equipments, the assessee had claimed 80% depreciation against the "control panel board and transformer", treating them to be electrical equipments, classified under the head "B". Instrumentation and monetary systems for monitoring energy flows" in the depreciation table New Appendix-I-III-(8)(ix)B, which works to Rs. 1,80,229/-. The assessing officer was of the view that the above items do not qualify for depreciation at 80%, as these equipments are not classified under the heading E. Electrical equipment, of the depreciation table. Accordingly, the assessing officer disallowed the excess depreciation of Rs. 1,80,229/- and added to the total income.

4. Being aggrieved by the same, the appellant-assessee has preferred an appeal in I.T.A. No. 12/2014-15, to the Commissioner of Income-Tax (Appeals)-II, Madurai, contending inter alia that,

"(i) The assessing officer restricted the claim of Depreciation from 80% to 15% which is applicable in item 111(1) of the Depreciation schedule without considering the fact that 15% is applicable to Machinery and Plant other than those covered by sub items (2) (3) and (8) below. Item No. 2 Covers Motor cars and No. 3 Covers Aero plane, Motor Buses, Commercial Vehicles, Air Pollution and Water Pollution control equipment etc., and No. 8, Covers, Wooden parts, Rollers of Flour mill, sugar mills and iron and steel industry (ix) Energy saving devices (A) Specified boilers and furnaces, (B) Instrumentation and monitoring system for monitoring energy flows, (C) Waste heat recovery equipment, (D) Cogeneration systems, (E) Electrical Equipments, (F) Burners, and (G) Other Equipments (XIII) Renewable Energy devices. The disputed items are under item(3) which will not come under Plant and Machinery which is eligible for 15%.

(ii) The assessing officer allowed depreciation of 15% as against the claim of 80% for the following items (1) Control Panel Board and (2) Transformer with out considering whether these items are not covered by sub-items 2 or 3 or 8 of the Depreciation schedule.

(iii) The assessing officer failed to consider that those two items come under sub-items 8(B a) Automatic Electrical Load monitoring systems and Sub-item (8) (ix)(Ec, Ed) Automatic Voltage controller, power factor controller for AC Motors of the

schedule and hence 15% depreciation is not applicable but 80% applicable which has been rightly claimed."

5. While considering the definition, "Transformer", as per Wikipedia, vide order, dated 21.10.2014, in I.T.A. No. 12/2014-15, the Commissioner of Income-Tax (Appeals)-II, Madurai, has upheld the findings of the assessing officer, as hereunder :

"4.5. The definition of a transformer as per Wikipedia is as under :-

A transformer is an electrical device that transfers energy between two or more circuits through electromagnetic induction and are designed to efficiently change AC voltages from one volte level to another increase or decrease.

4.6. Appellant is arguing that depreciation of 80% is allowable under the Act for Automatic Electrical Load monitoring systems and Automatic Voltage controller, power factor controller for AC Motor and that Transformer and Control Panel Board represent Automatic Electrical Load monitoring system and Automatic Voltage controller. A transformer is used to step up or step down the voltage and is not same as Automatic electrical Load monitoring systems and Automatic Voltage controller, power factor controller for AC Motor. Therefore the decision of the Assessing Officer to restrict the depreciation is in order and the addition is upheld."

6. As regards the claim of depreciation on computers and computer peripherals, the assessee claimed depreciation on the following items, viz., cannon lide, scanner, computerized counting and stacking machines, transportation charges, CTP machine, scanner, sisco router, modem, computerized counting and stacking (F/C), CTP machine (clearing charges), CTP machine(erection) treating it as "Computers" as mentioned in New Appendix-I-III (5) of the Income Tax Rules, which according to him, are eligible for depreciation @ 60%.

7. The assessing officer disallowed the claim of higher depreciation at 60%, on the following remarks,

"The depreciation in respect above machinery was claimed at the rate of 60% under the head computers. Only computers including computer software is eligible for depreciation at 60% as classified in SI. No. 5 under the heading III. Plant and Machinery of Part-A of the depreciation table. The above machineries are computerized machines and are not computers classified in the depreciation table. Hence they are eligible for depreciation @ 15% only. Accordingly the excess depreciation of Rs. 17,13,508/- and Rs. 9,01,181 calculated above is disallowed and added to the total income."

8. Being aggrieved by the same, the appellant-assessee has preferred an appeal in I.T.A. No. 12/2014-15, to the Commissioner of Income-Tax (Appeals)-II, Madurai, contending inter alia that,

"(i) The assessing officer failed to consider that computer accessories and peripherals such as printers, scanner and server etc., being integral part of computer system and they cannot be used without computer as decided in the case of **C.I.T v. BSES Yamuna Power Ltd. (2013) 358 I.T.R 47 (Delhi)**.

(ii) The assessing officer failed to consider the decision made in the case A.C.I.T Circle-12(1) v. G.E. Capital Business New Delhi Process Management services Pvt. Ltd., AIFACS in I.T.A. No. 2887/Del/2011 for the assessment year 2007-08 in which case the claim of Depreciation @ 60% was allowed on Laptops, Printer, Scanner, Laptop Mouse, IBM San Switches, Projector, Pendrive, Network equipment, router pack desktop with monitor, visual impex etc.

(iii) The assessing officer failed to consider the decision made in the case of CIT v. BSES Rajdhani powers Ltd In I.T. Appeal No. 1266 (Delhi) of 2010, Hon"ble Delhi High Court held that the computer accessories and peripherals such as printers, scanners and servers etc., form an integral part of computer system and in fact, the computer accessories and peripherals cannot be used without computer and consequently as they are the part of computer system, they are entitled to 60% of depreciation.

(iv) The above decision was followed in the case of **Omni Globe Information and Technologies India (P) Ltd. (2011) 131 I.T.D 280 (Delhi)**.

(v) In the case of DCIT v. Data Craft India Ltd. in I.T.A. Nos. 7462 and 754/Mum/2007, the Mumbai Special Bench held that routers and switches are to be included in the block of computers entitled of 60% Depreciation. From the above decisions, it is clear and evident that the computers, computer accessories and peripherals such as printers, scanners, servers Router, Modem and computerized Machineries and plants are form part of computer and hence they are eligible 60% Depreciation."

9. While considering the explanation, "Computerized Counting and Stacking Machine and the CTP Machine", the Commissioner of Income-Tax (Appeals)-II, Madurai, vide order in I.T.A. No. 12/2014-15, dated 21.10.2014, upheld the findings of the assessing officer, as hereunder :

"5.5 Surprisingly, the name of the machine in the invoice is "Logic stacker with strapper". Assessee classified this machine with the description computer counter and stacker. It is surprising how Appellant has modified the name of the machine. Normally the name of the machine in the accounts should always be what is indicated in the invoice and in my view Appellant has no choice of writing the description as it wishes. When questioned, Appellant stated that it is based on the function it performs.

5.6 With regard to the 2 machine assessee has recorded the name in the accounts as, CTP machine, It was explained during appeal that CTP means Computer to Printer. This is the latest machine wherein the draft of the layout of the newspaper is made on the computer which is then transmitted to the printing press. This

machine replaces the earlier method of manual typesetting and preparing the block for printing press Appellant was asked to produce copy of invoice of this machine which is enclosed as annexure 2 of this order This machine is imported from Taiwan and name in the invoice as "Register TY-800 AOL Vision plate punching and bending system". The invoice mentions that Register TY-800 AOL Vision plate punching and bending system is a machine with 3 different components as under :

- (a) One TY-800 AOL Auto Vision Punching and Bending;
- (b) One Standard Conveyor;
- (c) One plate stacker.

5.7 Customs authorities have also classified this machine and charged the applicable customs duty with the following description Register TY-800 AOL Vision plate punching and bending system and has 3 components :

- (a) One TY-800 AOL Auto Vision Punching and Bending;
- (b) One Standard Conveyor;
- (c) One plate stacker.

5.8 Name of asset in the invoice as "Register TY-800 AOL Vision plate punching and bending system". Assessee classified this machine with the description CTP machine. It is surprising how Appellant has modified the name of the Asset. Normally the name of the machine in the accounts should always be what is indicated in the invoice and in my view Appellant has no choice of writing the description as it wishes. When Appellant questioned stated that it is based on the function it performs.

5.9 Increasingly organisations are moving towards computerized integrated manufacturing, where more and more computers, robots, and microprocessors are used in conjunction with the machines. But the machines cannot be called as computers even though computer is an integral and dedicated part of the whole machine. That computer in the machine cannot be used for any other purpose. For example a CNC (Computerized Numerically Controlled) lathe machine has a computer and microprocessor to control the movement of the spindle but that cannot make a CNC lathe as a computer. It still does machining, cutting metal and creating shapes in the metal but it is more automated and driven by preprogrammed instructions through the computer. it is still a machine assisted by a computer and microprocessor.

5.10 As per the schedule of depreciation, the rate 60% .of depreciation is allowable only to computers and at best may include accessories like servers, scanner sisco router modem etc., as held in the decisions cited by the Appellant but can never include the 2 machines acquired by the assessee. The description of the machines as per the invoice is different and Appellant's decision to use its own names adding the

word computer is incorrect. Assessee cannot invent its own nomenclature add the word computer which is not there in invoice and then proceed to claim depreciation at 60% with the argument that they are computers.

5.11 Even on functionality test, these machines represents plant and machine which helps in easier typesetting and faster printing of the newspaper and automated stacking of newspaper in correct numbers. The machines do contain computer as one part of the whole machinery, but it should be noted that the computer is dedicated to that machine and does only the functions for that machine. This in my view does not make machines as computers to be eligible for claiming the depreciation at 60%.....

5.12 The decisions relied by the Appellant only cover assets like laptops, servers, printers, scanner, sisco router, modem, laptop mouse, Projector, Pendrive, Network equipment, router pack desktop with monitor. IBM San Switches which are integral parts of computer band those which cannot be used without being attached to the computers. None of these decisions cover the any machine used for manufacturing which has computer as one of the components.

5.13 In view of this factual and legal position, it is held that out of the Assets listed by the AC, only scanner, sisco router modem is, eligible for depreciation at 60%. Rest of the assets listed by the AC form part of plant" and machinery and thus is" eligible for depreciation only at 15%. The AO"s decision to treat the machines not as computers but as Plant and Machinery and restricting the claim of depreciation to 15% on these machines is in order and the assessee"s arguments are rejected."

10. Being aggrieved by the order of the appellate authority in I.T.A. No. 12/2014-15, dated 21.10.2014, the assessee has preferred an appeal in I.T.A. No. 2829/Mds/2013, contending inter alia,

"(i) The Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 1,80,229/- being the disallowance of the claim of depreciation at 80% and the grant of depreciation at 15% by the Revenue, since these equipments cannot be classified in any of the items mentioned in the depreciation table New Appendix-I-III-(8)(ix) of the Income Tax Rules.

(ii) The Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 17,13,508/- and Rs. 9,01,181/- being the disallowance of the claim of depreciation at 60% and the grant of depreciation at 15% by the Revenue since these items cannot be considered as "Computers" falling in Appendix I-III (5) of the Income Tax Rules."

11. Before the Tribunal, as regards claim of depreciation @ 80%, on "control panel board and transformer", the appellant-assessee has contended that the same can be classified under the head, "B. Instrumentation and monetary systems for monitoring energy flows", as mentioned in New Appendix-I-III-(8)(ix)B and therefore,

they are entitled to depreciation @ 80%, as provided under the Act. Considering the arguments of the appellant-assessee and the findings of the authorities, the Income Tax Appellate Tribunal, vide order, dated 14.01.2016, in I.T.A. No. 2829/Mds/2013, held as follows :

"We find merit in the contention of the Ld. A.R. Control panel board and Transformers are more or less items either falling in the category of Instrumentation and monitoring systems - as stated in the depreciation schedule in New Appendix I-III-(8)(ix)B of Income Tax Rules or "Electrical equipment" as stated in the New Appendix I-III-(8)(ix)E under the head Electrical Equipments taking into account of the principles of ejusdem generis. Therefore we hereby direct the Ld. Assessing Officer to grant depreciation @ 80% to the assessee on these above stated items."

12. On the claim of depreciation on computers and computer peripherals, the Tribunal further held, as follows :

"We agree with the view of the Ld. CIT (A). Only computer peripherals can be at the most considered as computers for the purpose of claiming depreciation at the rate prescribed in New Appendix I-III(5) of the Income Tax Rules. All other items fall in the category mentioned in New Appendix I-III(1) of the Income Tax Rules as held by the Ld. CIT (A). Therefore, we do not find any reason to interfere with the order of the Ld. CIT (A) on this issue who has elaborately considered this matter in his order."

13. Being aggrieved by the same, the assessee, has filed the instant Tax Case Appeal, on the following substantial question of law,

"Whether the Appellate Tribunal is correct in law, in passing a cryptic order in sustaining the action of the respondent in restricting the claim of higher deprecation of 15% as against the claim of 60% for the computer machineries, thereby confirming the addition of the differential depreciation in the computation of taxable total income, while overlooking the functional test proving and establishing perversity in the order passed by them both on facts and in law ?"

14. Though, reiterating the very same submissions made before the appellate authority, Mr. S. Sridhar, learned counsel for the appellant-assessee, assailed the correctness of the order, stated supra, made submissions on the substantial questions of law and prayed for an answer, in favour of the assessee, going through the material on record and the orders of the authorities and tribunal, we do not find any manifest error. On the other hand, we are of the considered opinion that orders of the authorities and the appellate tribunal, are correct, in holding that the machineries, for which, depreciation to the extent, sought for, do not fall under the definition, "computer, including computer software". Fact that the machineries do not fall under the above said category, cannot be termed as perverse and therefore, the order impugned, does not call for interference.

15. We have given our careful consideration, as to how both the appellate authority and the tribunal have considered the facts of the case and rendered findings, on the rival submissions of the parties. Going through the material on record, we are of the considered view that the concurrent findings of fact, rendered by the CIT (Appeals) and the Income Tax Appellate Tribunal, do not call for any interference, as no substantial question of law, is involved.

16. In the result, the Tax Case Appeal is dismissed. No costs.