

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.394/Ind/2017**  
**Assessment Year 2011-12**

M/s. Hindustan Equipments Pvt. Ltd, C/o S.S. Solanki & Co, 402, Trade House, 16/3 South Tukoganj, Indore (Appellant)	Vs.	ACIT-5(1), Indore  (Respondent )
<b>PAN No.AABCH0707P</b>		

Revenue by	Shri R.P. Mourya, Sr.DR
Assessee by	Shri S.S. Solanki, C.A
Date of Hearing	18.12.2018
Date of Pronouncement	10 01.2019

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2011-12 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 08.03.2017 which are arising out of the order u/s. 143(3) of the Income Tax Act 1961(In short the 'Act') dated 30.03.2014 framed by ACIT-5(1), Indore.

2. Assessee has raised following grounds of appeal;

“1. That the learned CIT(A) erred in maintaining disallowance of Rs.1,39,47,703/- out of depreciation made by the A.O. That depreciation on CNC Drill Machine claimed @80% is legal and proper. The disallowance so made by the AO erred maintained by learned CIT(A) is illegal and wrong, the same require to be deleted”

3. Briefly stated facts as culled out from the records are that the assessee is a Private Limited Company engaged in the business of manufacturing of Dies, Roller Shell, Machineries and Feed & Grain Plant equipment. Loss of Rs.35,73,286/- declared in the e-return of income filed on 29.09.2011 which was further revised on 22.09.2012. Case picked for scrutiny and necessary notices u/s 143(2) and 142(1) of the Act were duly served upon the assessee. Apart from the additions for unexplained cash credit of Rs.28,00,000/- received from three different parties which in the view of the Learned Assessing Officer (In short 'Ld. A.O') could not pass the test of identity, genuineness and creditworthiness, Ld. A.O also examined the claim of depreciation @80% under Block IX on purchase of CNC Drill machine. It was submitted by the assessee that the higher rate of depreciation @80% has been claimed under the rates of Energy Saving Device. It was claimed that the

machines were used to manufacture agricultural and municipal waste conversion devices. However it was accepted that the pelleting dies manufactured by assessee did not produce any energy. The submission of the assessee could not convince the Ld. A.O and he therefore denied 80% depreciation charged by the assessee and only allowed the normal rate of 15% and additional depreciation @20% on the CNC drill machine purchased by the assessee. Accordingly as against the claim of depreciation by the assessee at Rs. 2,47,95,914/- the Ld. A.O only allowed depreciation at Rs.1,08,48,211/- thereby making the addition at Rs.1,39,47,703/-. Income assessed at Rs.1,31,74,417/-.

Aggrieved assessee filed appeal only against the disallowance of depreciation at Rs.1,39,47,703/- but failed to succeed as the impugned disallowance was sustained by Ld.CIT(A) observing as follows;

“5. Ground No.1:- This ground of the appellant IS directed against the disallowance of RS.20 146681/ - being claim of depreciation at the rate of 80%) on CNC Drill Machines disallowed. The detailed facts of the case as per the assessment order are reproduced at Para No. 2 above and the detailed submissions of the appellant are reproduced at Para NO.3 above.

5.1 The crux of the appellant's argument is that as the CNC Machines

are used for the manufacture of pellet machine dies and the pellet machines are used for the production of biomass pellets which are a renewable form of energy the CNC Machines are renewable energy devices used in conversion of agricultural and municipal waste. In view of the above they are eligible for higher depreciation as prescribed in the depreciation schedule under the Head "Renewal energy devices" listed in Clause 8(xiii) (p) & (r). The relevant part of the schedule is already reproduced at para No.2 above.

5.2 The CNC machine is simply a machining tool which works on the basis of a preprogrammed computer. It is thus like a robot doing the machining job. As per Wikipedia it is defined as under:

"Computer numerical control (CNC) is the automation of machine tools by means of computers executing pre-programmed sequences of machine control commands. This is in contrast to machines that are manually controlled by hand wheels or levers, or mechanically automated by cams alone.

In modern CNC systems, the design of a mechanical part and its manufacturing program is highly automated. The part's mechanical dimensions are defined using computer-aided design(CAD) software, and then translated into manufacturing directives by computer-aided manufacturing(CAM) software. The resulting directives are transformed (by "post processor" software) into the specific commands necessary for a particular machine to produce the component, and then loaded into the CNC machine.

Since any particular component might require the use of a number of different tools – drills, saws, etc . - modern machines often combine multiple tools into a single “cell”. In other installations, a number of different machines are used with an external controller and human or

robotic operators that move the component from machine to machine. In either case, the series of steps needed to produce any part is highly automated and produces a part that closely matches the original CAD design”

5.3 From the above discussion it is thus evident that the CNC Machine is a specialised machining tool. In the context of the appellant it is 'used for manufacturing dies for pellet machines. These dies are then used [or making biomass pellets as explained by the appellant. However the logic given by the appellant that it is a renewable energy device is stretching the term renewable energy device to such an extent as to make it possible to include anything and everything under the said term, Admittedly the CNC Machine is not producing any energy far less renewable energy by itself. The item (p) to which reference has been made by the appellant states “Agricultural; and municipal waste conversion devices producing energy'. As discussed above the CNC machine does not convert agricultural waste I municipal waste and does not produce energy by conversion of such waste. It is therefore outside the purview of item (p)

5.4 The other argument taken by the appellant is that it falls under item (r) as it manufactures item at (p) and hence is eligible. As has already been discussed above the CNC machine on which the claim has been made does not convert agricultural and for municipal waste and hence is not such a device and is also not a conversion device producing energy. It produces a die and the manufacture of the CNC Machine also cannot be termed as 'Agricultural and municipal waste conversion device producing energy'. It also does not manufacture any of the items listed at 8(xiii) (a) to (q).

5.5 The logic given by the appellant is that as the CNC machine is for

producing dies used in biomass pelletizing machine and the pellets are renewable energy it qualifies for the higher depreciation. This logic of the appellant is by adopting an interpretation which is not warranted from the language of the provisions. In the case Orissa State Warehousing Corporation Vs CIT 237 ITR 589 (SC) it has been held as under;

"A fiscal statute is to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The court is to ascribe natural and ordinary meaning to the words used by the legislature and the Court ought not under any circumstances to substitute its own impression and ideas in place of the legislature intent as is available from a plain reading of the statutory provisions"

5.6 When the words so used in the schedule are interpreted they do not lead to an absurd result and are in consonance with the scheme of higher depreciation on renewable energy devices. Thus the solar collectors are working on the solar power of the sun and converting the same to energy. Similarly the wind mills harness the wind power and convert it to energy and hence the item at (p) also refers to devices which produce energy from conversion of agricultural and municipal waste and the CNC machine does not qualify to be labelled as such a device. It also does not produce such device and hence does not fall in the item (r) also. In view of the above discussion it is held that the claim of the appellant has been rightly disallowed by the AO and the action of the AO is upheld in appeal. This ground of the appellant is therefore dismissed."

4. Now the assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee made following written submissions in support of its claim for 80% depreciation on the purchase of 4-Spindle CNC Drill machine which are mainly used to manufacture pellet mill die drills pelleting dies.

That the device has been defined at various places, some of which are as under:-

(a)Google:<https://www.google.co.in/#q=device+definition> (Copy enclosed)

(b) Dictionary .cambridge. org: <http://dictionary/English/device> (Copy enclosed)

(c) Dictionary.com:<http://www.dictionary.com/browse/device?s=t>(Copy enclosed)

(d)Oxforddictionaries.com:  
[http://www.oxforddictionaries.com/definition/English/ device? = device+\(Copy enclosed\) .](http://www.oxforddictionaries.com/definition/English/device)

It is very clear that a device is a thing made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment. It is also defined as "an object or a machine that has been invented for a particular purpose." As such the definition and meaning of Word 'Device does cover a specific part which in this case is a pelleting die. That pellet mill is producing pellets which is a device converting agricultural Waste into energy hence pellet mill is energy producing device covered under sub clause P. As CNC machine produces dies used in pellet machine, it comes under sub clause (r) of clause (xiii). There is no doubt that a pelleting die is the device used for conversion of Agricultural waste into

Fuel Pellets and the machine doing this is called as a pellet mill or a pellet machine and in turn the whole plant. The assessee company is making all three that is the pelleting dies, pellet mills and pellet plants. This very fact entitles the assessee to not only claim 80% depreciation on these Particular machines for making pelleting dies and pellet mills but on each and every installation on its premises. A Pellet Die is converting agricultural waste into pellet Fuel which is a form of energy. As such there is no doubt and confusion on the same falling in clause (xiii) sub clause (p) & (r) of depreciation chart. The mention in point (5.3) and point (5.5) of the order passed by Assessing officer is as such not correct. We are providing list and also copies of their order. Please also refer their websites which clearly mention that they all produce pellet Fuel (which is a very popular form of energy).

S. No	Name of the Party	Office Address	Key Person	Mob No.	E Mail	Web site
1	FIRST ENERGY PVT. LTD C/O ESTEEM BIO FUEL (P) LTD	4 <sup>th</sup> Floor, Srikrishna Chambers Near Sai Chowk Sus Road, Pashan Pune - 411021	Mr. Shantilal (HO) Mr Sampath (Plant I/c)	07387703456 09591454516	Shantilal.jakite@firstenergy.in Sampath.kumar@firstenergy. In	www.Firstenergy.in
2	LIVEGREEN CLEAN TECH PVT.LTD	Plot No.2211, Udyog Vihar, Phase-I, Gurgaon, Haryana, India	Mr. Ashish Gupta	09718077465	<a href="mailto:Ashish.gupta@sar-group.com">Ashish.gupta@sar-group.com</a>	Livegreen bioenergy.Com

Hindustan Equipments Pvt. Ltd  
ITA No.394/Ind/2017

3	PTC INDIA	#2332, KR Road 20 <sup>th</sup> Cross, Bana Shankari II Stage, Bangalore 560070	Mr. Prashan ath (CEO)	09844046383	Ptc.blr@gmail.com	www. activebfp. Com
4	FEED MILLING TECH	B/5, Mangal murti Aptt. Opp. Novino Battery, Makarpur a, Vadodara 3900010 (Gujarat)	Mr. Raj  Mr. Jay Patel	09824076771  09725503599  09427464434	Feedmillingtech gmail.com @	www. Feedmillin gtech.com
5	RAJARAM SOLVEX LTD	A-21, MDC Industrial Area, Talwa wa D st. Sangli, Islampur, Maharash tra 415409 (India) Tel.No.(s) 02342 220195 Fax No.(s) 02342	Mr. Sanjeev Pitke	9326368356	admin@rajaram solvex.com	www. Rajaram solvex.co m

		220194				
6	RAJDEEP BIOMASS PELLETS	Plot No.30 Ward 11/ BF, Opp. Naheru Park, Shivnagar , Gandhidh am- 370201 Gujarat	Mr.Hardi k	9904404334	Rajdeep pellets @ gamil.com	

To conclude, the assessee stated that the confusion of the AO is that the assessee is claiming depreciation under clause (xiii) p whereas the assessee is claiming the same in clause (xiii) (r) which has been accepted by the AO in his own order that this machine is used for producing pelleting dies. Produces Biofuel, Agricultural waste processing plants along with all machineries and their parts. Department's contention is that the word 'Device' means a complete machine producing some form of energy. Our submission is that the word device means "A thing made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment "Substantiated by its meaning on Google and various prominent dictionaries. Our submission is that we are making the parts, the machines and the plants as well. As such, disallowing only on the ground of common interpretation of a word also does not arise. That the intention of legislature for giving incentive in the form of higher rate of depreciation is to promote the manufacture of renewable energy saving devices and to protect environment as well. The AO, by disallowing the claim by taking a very narrow approach is frustrating the basic object of the legislature. As the assessee is producing dies used in pellet mills which produces pellets i.e. energy fuel, it is entitled to

depreciation @ 80% as given in clause (xiii) P & r. The disallowance of depreciation so made by AO on the basis of wrong findings is illegal and wrong. The same, therefore, require to be deleted”.

6. Ld. Counsel for the assessee further made a strong submission that the details of machine manufactured by the assessee and its direct link with the machines used to make renewable energy device which converts agricultural and municipal waste into energy has not been examined by the Ld.A.O in the right perspective and thus requested for one more opportunity to go before the Ld.A.O to present the facts of the case.

7. Per contra Departmental Representative though vehemently argued supporting the orders of both the lower authorities but raised no objection to the plea of the Ld. Counsel for the assessee of setting aside the issues raised in this appeal to the file of the Assessing Officer for afresh examination.

8. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is against the order of Ld. CIT(A) confirming the disallowance of depreciation at Rs.1,39,47,703/- claimed by the assessee @80% on the purchase of

CNC drill machine but allowed by the Ld.A.O at 15% coupled with 20% additional depreciation.

9. It has been contended by the assessee before the lower authorities that the depreciation @80% has not been made for the purchase of energy saving device but it has been claimed for the purchase of machineries and plants i.e. CNC drilling machine which are used for manufacturing of Pellet Mill die drills pelleting dies which are further used in manufacturing agricultural and municipal waste conversion device.

10. After thoroughly examining the assessment order, finding of Ld.CIT(A), and the detailed submission of the Ld. Counsel for the assessee made before the lower authorities as well as before us. We are of the view that the issue needs re-examination as to whether the impugned assets purchased by the assessee i.e. CNC Drilling machine is eligible for depreciation under which of the category of assets;

(a) Being a machine in the nature of agricultural and municipal waste conversion device.

(b) Being a machine used to manufacture machines in the form of agricultural and municipal waste conversion device.

(c) The machine eligible for 15% depreciation along with 20% additional depreciation.

11. Ld. Counsel for the assessee has placed various documents and materials on record in support of its claim for 80% depreciation on the cost of CNC Drilling machine by submitting that the CNC Drilling machine are used to manufacture Pellet Mill die drills Pelletting dies which are further used for manufacturing agricultural and municipal waste conversion device. However it is not transcribing from the records whether the claim of the assessee is for the assets coming under Clause (xiii)(P) or Clause (xiii) (R) of the depreciation chart which refers to agricultural and municipal waste conversion device producing energy Clause (xiii) (P) or machinery and plant used in the manufacturing of agricultural and municipal waste conversion device Clause (xiii) (R) of the depreciation chart. Since the issue discussed above about the chargeability of depreciation on the cost price of CNC Drilling Machines goes to the root cause of the ground raised before us, the same needs to be examined afresh by the Ld. A.O in the light of the discussions made herein above.

12. We therefore in the given facts and circumstances of the case as well as the acceptance of both the parties, set aside the issues raised before us to the file of the Ld.A.O for *denovo* adjudication and hereby direct the Assessing Officer to examine the claim of depreciation on CNC drill machine in the light of various documents, material evidence and other details to be furnished by the assessee in support of its claim that CNC drill machines are eligible for 80% depreciation. Needless to mention that reasonable opportunity of being heard should be provided to the assessee.

13. In the result the appeal of the assessee is allowed for statistical purpose.

The order pronounced in the open Court on 10.01.2019.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 10 January, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore