

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 267 of 2014
Date of Decision:- 13.05.2015**

M/s. Krishan Kumar Sud

.....Appellant(s)

vs.

Commissioner of Income Tax-II, Amritsar

.....Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Ravi Shankar, Advocate,
for the appellant.

Mr. Denesh Goyal, Advocate,
for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

1. This is an appeal against the order of the Income Tax Appellate Tribunal dated 14.01.2014 allowing the respondent's/revenue's appeal against the order of the Commissioner of Income Tax (Appeals) which, in turn, had set aside the order of the Assessing Officer refusing to grant depreciation in respect of plant and machinery.

2. The appeal is admitted on the following substantial question of law:-

“ii. “Whether under the given facts and circumstances of the case, the Tribunal is justified in reversing the order of CIT (A) allowing the claim of depreciation when it is allowable as per circular of the CBDT and Judgments (Supra), because use of machinery in the earlier years had been accepted”?

3. The matter pertains to the assessment year 2006-07. We proceed on the basis that the Assessing Officer estimated the net profits of the appellant at 7% of gross receipts. The CIT (Appeals) reduced this to

4%. Thereafter, the CIT (Appeals) allowed depreciation on the plant and machinery.

4. The Tribunal, however, held that the assessee had not brought on record that the assets purchased by them had been put to use during the impugned year. This finding is contrary to the record. It is pertinent to note that in the order of the CIT (Appeals) itself, it is expressly stated that the depreciation was allowable since complete and full particulars of the written down value as carried forward from earlier years was available on record. Even the Assessing Officer had not held that the assets had not been put to use during the assessment year in question i.e. 2006-07. The finding is, therefore, perverse.

5. It was contended that the provisions of Section 44AD of the Income Tax Act, 1961 (in short 'the Act') apply to the present case.

6. It is pertinent to note, however, that neither the Assessing Officer nor the CIT (Appeals) nor the Tribunal proceeded under Section 44AD of the Act. This is clear from the fact that whereas Section 44AD requires a rate of 8% to be applied, the Assessing Officer himself had applied the rate of 7%. Even the CIT (Appeals) applied the rate of 4%. The Tribunal also did not proceed on the basis that Section 44AD of the Act was applicable to the present case. The argument is, therefore, rejected.

7. The appeal is allowed. The question of law is decided in favour of the appellant/assessee. The order of the CIT (Appeals) is restored so far as question no. 2 is concerned regarding depreciation.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

13.05.2015

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