In the High Court of Punjab and Haryana, Chandigarh

ITA No. 179 of 2005

Date of Decision: 19.01.2007

M/s Avery Cycle Industries Limited.

…Appellant

Versus

C.I.T. (Central), Civil Lines, Ludhiana.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE VINOD K. SHARMA

PRESENT: Mr. S.K. Mukhi, Advocate,
for the appellant.

Mr. S.K. Garg Narwana, Advocate,
for the respondent.

JUDGMENT

M.M. KUMAR, J. (Oral)

This is an appeal filed under Section 260A of the Income Tax Act, 1961, challenging order dated 29.10.2004, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, in ITA No. 186/Chandi/1998 (Annexure A-1), denying the appellant to raise an additional ground of appeal with regard to computation of correct depreciation and consequential taxable income.

Notice of the appeal was issued and with the consent of the parties the appeal is taken up for final hearing.

After hearing learned counsel for the parties, we find that the Revenue cannot successfully dispute the fact that an additional ground can always be raised under Section 254 of the Income Tax Act, 1961, before the Tribunal if it involves a question of law, which emerge from facts on record in the assessment proceedings, although the same might not have been raised before the Commissioner of Income Tax (Appeal). The matter appears to be concluded against the Revenue by the judgment of Hon'ble the Supreme Court in the case of **National Thermal Power Co. Ltd. v. Commissioner of Income Tax, (1998) 229 ITR 383 (SC)**. The view of Hon'ble the Supreme Court emerges from the concluding part of last but one para of the judgment, which reads as under:-

> "……Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

When the facts raised in the instant appeal are examined in the light of the principle laid down by Hon'ble the Supreme Court, then no doubt is left that all the facts relevant to the additional ground seeking depreciation allowance are on record. The Tribunal is only to decide the claim of depreciation made by the assessee as per the

Income Tax Act, 1961. The additional ground could be raised by the assessee in appeal before the Tribunal under Rule 11 of the Appellate Tribunal Rules, 1963. In the present case, the following additional ground has been raised, as is evident from the perusal of the additional ground of appeal, dated 9.4.2004 (Annexure A-6):-

> " That the W.D.V. of the assets in respect of old as well as new units of Pahwa Steel & Tube Mills (P.S.T.M.), a unit of Avery Cycle Industries Ltd., has not been brought forward correctly from the preceding assessment year."

In view of above, the impugned order dated 29.10.2004 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, is hereby set aside and the Tribunal is directed to deal with the aforementioned additional ground in accordance with law.

The appeal stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(VINOD K. SHARMA)
JUDGE

January 19, 2007
Pkapoor