

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" (SMC), HYDERABAD**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**I.T.A. No. 673/HYD/2016**

Assessment Year: 2009-10

Shalivahana Green  
Energy Ltd.,  
SECUNDERABAD  
**[PAN: AALCS2217B]**

Vs Jt. Commissioner of  
Income Tax,  
Circle-3(1),  
HYDERABAD

**(Appellant)**

**(Respondent)**

For Assessee : Shri S. Rama Rao, AR  
For Revenue : Shri K.J. Rao, DR

Date of Hearing : 08-09-2016  
Date of Pronouncement : 14-09-2016

**ORDER**

This is an appeal by Assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Hyderabad dated 23-02-2016 on the issue of denial of deduction u/s. 80IA of the Income Tax Act [Act] on the income received from sale of 'carbon credits'.

2. Assessee is in the business of generation of electricity using biomass in which assessee became eligible for certain Carbon Emission Reduction Certificates [CERC] popularly known as 'carbon credits'. Assessee had income from such carbon credits to the tune of Rs. 18,31,077/- on which 80IA deduction was claimed. Assessing Officer (AO) did not allow 80IA deduction on the ground that such deduction is allowable only to the companies engaged in

infrastructure development and further held that income from carbon credits is not derived from the business.

2.1. Assessee raised objection before the Ld. CIT(A) and also filed additional grounds that sale of carbon credit was to be treated as capital receipt, therefore, should not have taxed at all. Ld. CIT(A) after considering the submissions has held as under:

*“6. It is pertinent to mention that the Hon'ble ITAT, Hyderabad, B-Bench in case of My Home Power Ltd., Vs. DCIT in ITA No. 1114/Hyd/2009 held that the receipt from sale of carbon credit was capital receipt therefore not taxable. The decision of Hon'ble ITAT was confirmed by Hon'ble AP High Court in the case of CIT Vs. My Home Power Ltd 365 ITR 82 wherein it was held that receipt on sale of carbon credit is capital receipt. Therefore the Hon'ble High Court held that the receipt is a capital receipt, therefore not taxable, therefore this ground of appeal becomes infructuous and treated as dismissed”.*

3. Assessee has raised the following grounds:

*“2. The learned CIT erred in not considering the additional ground of appeal raised by the appellant.*

*3. The learned CIT ought to have decided the appeal holding that the amount of Rs. 18,31,077/- representing sale of carbon credits is a capital receipt and, therefore, not taxable as revenue income”.*

Ground Nos. 1 & 4 are general in nature.

4. After considering the rival submissions, I am of the opinion that Ld. CIT(A) while accepting that amount is a capital receipt and therefore not taxable, wrongly considered that ground as infructuous and treated as ‘dismissed’. In fact when the amount is

not taxable at all, question of treating it as income does not arise. Therefore, whether a deduction u/s. 80IA is allowed or the amount is excluded from the computation of income, the result would be same. Assessee's alternate ground should have been considered and necessary relief should have been allowed by the CIT(A). Be that as it may, since the sale amount of carbon credits was already held by Hon'ble AP High Court as a 'capital receipt', inclusion of the same in the total income computation does not arise. Therefore, allowing grounds of assessee, I direct the AO to exclude the amount from the computation of income itself. The claim of 80IA on this amount does not arise in this case. I allow the grounds of assessee by modifying the order of CIT(A) accordingly.

5. In the result, appeal of assessee is allowed.

Order pronounced in the open Court on 14<sup>th</sup> September, 2016

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 14<sup>th</sup> September, 2016

TNMM

Copy to :

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2. *Joint Commissioner of Income Tax, Circle-3(1), Hyderabad.*
3. *Commissioner of Income Tax(Appeals)-3, Hyderabad*
4. *Pr. Commissioner of Income Tax-3, Hyderabad.*
5. *D.R. ITAT, Hyderabad.*
6. *Guard File.*