

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA.No.1678/Hyd/2014  
Assessment Year 2009-2010

Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad. (Appellant)	vs.	M/s. Markdata Power & Energy Ltd., Hyderabad. PAN AABCM3690C (Respondent)
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Cross Objection No.4/Hyd/2015  
Arising out of  
ITA.No.1678/Hyd/2014 - Assessment Year 2009-2010

M/s. Markdata Power & Energy Ltd., Hyderabad. PAN AABCM3690C (Appellant)	vs.	Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad. (Respondent)
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For Revenue :	Mr. A. Sitarama Rao
For Assessee :	Mr. A. Srinivas

Date of Hearing :	14.09.2016
Date of Pronouncement :	30.09.2016

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

These cross-appeals pertain to the A.Y. 2009-2010 and they are directed against the order passed by CIT(A)-V, Hyderabad.

2. The assessee-company is engaged in the business of Wind Power Generation. The company purchased Wind Turbine Generator (hereinafter referred to as "WTG") for a total consideration of Rs.1 crore. The said WTG was initially taken on

lease during the A.Y. 2005-06 from M/s. Suzlon Developers P. Ltd. Assessee claimed depreciation on WTG by taking into consideration the purchase consideration paid to M/s. Suzlon Developers P. Ltd. The assessment was originally completed under section 143(3) of the Act by allowing depreciation but at a later stage the Assessing Officer sought to reopen the assessment under section 147 of the Act on the ground that the value of the WTG cannot be taken as Rs. 1 crore since the WDV in the hands of M/s. Suzlon Developers P. Ltd., for the A.Y. 2008-09 was much less. He accordingly completed the re-assessment proceedings by revising the depreciation allowable.

2.1. Aggrieved, assessee challenged the order of the Assessing Officer on two grounds i.e., (a) reopening of assessment is bad in law inasmuch as there is no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and there were no new facts/fresh material brought on record by the Assessing Officer to form a 'reason to believe' that income chargeable to tax has escaped assessment and (b) even on merits, the assessee is entitled to depreciation on the amount paid by the assessee towards purchase consideration and the WDV reflected in the books of Suzlon should not be taken as the basis for computing the allowable depreciation.

2.2. The Ld. CIT(A) quashed the order passed by the Assessing Officer on the ground that reopening of assessment is bad in law and in this regard, he mainly relied upon the decisions of the Apex Court in the case of Kelvinator Limited 320 ITR 561 and in the case of CIT vs. Foramer France reported in (2003) 264

ITR 566. In addition thereto, for the sake of completeness, the Ld. CIT(A) adjudicated the matter on merits also by observing that Explanation-3 to Section 43(1) is not applicable in the circumstances of the case and hence the assessee is eligible for depreciation on the purchase price i.e., payment of Rs.1 crore made to M/s. Suzlon Developers P. Ltd. He thus, allowed the appeal filed by the assessee.

2.3. Though the re-assessment proceedings were quashed on the ground that the reopening is bad in law, the Revenue did not prefer an appeal on the said issue and it merely filed an appeal by raising the following grounds :

1. *“The order of CIT(A) is erroneous in law and facts of the case.*
2. *The Ld. CIT(A) erred in deleting the addition made towards the disallowance of excess depreciation claimed on windmill.*
3. *The Ld. CIT(A) ought to have considered that the asset leased by M/s. Suzlon Developers P. Ltd., (Lessor) had rights of claiming depreciation before the assessee company became the sole owner of the said asset.*
4. *Any other ground(s) that may be urged at the time of hearing.”*

3. As is the usual practice, off-late followed by the Revenue, the authorisation issued by the Commissioner of Income Tax-IV, Hyderabad is vague and general wherein the Assessing Officer has been given the liberty to file an appeal without mentioning as to what should be the grounds that are to be raised. Since the Assessing Officer or the Ld. D.R. has not come forward to point out as to what were the grounds that were

vetted by the Commissioner, either by showing the grounds authorised by the Commissioner or atleast by filing additional grounds, we assume that the direction issued by the Commissioner is only with reference to correctness of the decision taken by the Ld. CIT(A) vis-à-vis the deletion of the addition made referable to excess depreciation claimed on wind mill.

Since Ld. CIT(A) followed the binding decision of the Apex Court while holding that re-assessment proceedings are bad in law, the CIT-IV, Hyderabad might not have given approval for preferring an appeal with regard to correctness of reopening of the assessment but, at the same time, he appears to have overlooked the fact that without challenging the reopening of the assessment the issue urged before us is of academic importance which would not serve any purpose except wasting the judicial time of the Tribunal.

4. In the cross-objection filed, the assessee strongly supported the order passed by the Ld. CIT(A) by contending that assessee cannot be said to have purchased the asset at an enhanced price since there was no relation between the assessee and M/s. Suzlon Developers P. Ltd. Under these circumstances, it was contended that the CIT(A) was justified in holding that there was no purpose of reduction of tax liability within the meaning of Explanation-3 to Section 43(1) so as to take into consideration the WDV of the seller for the purpose of computing the depreciation allowable to the assessee.

5. We have heard the Ld. D.R. as well as the Learned Counsel for the assessee in this regard. No material was placed

before us by the Revenue to show that there was any motive on the part of the assessee to show that the assessee has paid excess consideration with an intention to claim excess depreciation. It is also not the case of the Revenue that there was any relationship between the assessee and M/s. Suzlon Developers P. Ltd., in the matter of purchase of WTG. In fact, no material was placed before us by the Revenue to show that the assessee had taken undue benefit by claiming depreciation at an enhanced cost. At any rate, having not preferring any appeal on the decision taken by the Ld. CIT(A) with regard to validity of the reopening of the assessment, the grounds urged before us by the Revenue are of academic importance and therefore, the appeal filed by the Revenue as well as the Cross-Objection filed by the assessee deserves to be dismissed as infructuous inasmuch as the order passed under section 143(3) read with section 147 having held to be bad in law the question of going into the merits of addition do not arise.

6. In the result, appeal of the Revenue and Cross Objection filed by the assessee are dismissed.

Order pronounced in the open Court on 30.09.2016

**Sd/-**  
**(D.MANMOHAN)**  
**VICE PRESIDENT**

**Sd/-**  
**(S. RIFAUZ RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 30<sup>th</sup> September, 2016

VBP/-

Copy to

1.	Asst. Commissioner of Income Tax, Circle-16(2), 7 <sup>th</sup> Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.
2.	M/s. Markadata Power & Energy Ltd., 678 Hazare House, Kanewar House, Sitabuldi, Nagpur.
3.	CIT(A)-V, Hyderabad.
4.	CIT-IV, Hyderabad
5.	D.R. ITAT "A" Bench, Hyderabad.
6.	Guard File