

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 1034/JP/2016
निर्धारण वर्ष/Assessment Year : 2012-13.

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| Asstt. Commissioner of Income Tax, Circle-6, Jaipur. | बनाम Vs. | M/s. Gangaur Export Pvt. Ltd., Anokhi Farm, Todi Ramzanipura, Jagatpura, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. AAACG 8877 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

राजस्व की ओर से / Revenue by: Shri R.A. Verma (Addl. CIT)

निर्धारिती की ओर से / Assessee by : Shri Sanjeev Kumar Mathur (CA) and
Shri Satish Ajmera (CA)

सुनवाई की तारीख / Date of Hearing : 24.01.2017.

घोषणा की तारीख / Date of Pronouncement : 30/01/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the revenue is directed against the order of Id. CIT (A)-2, Jaipur dated 20.09.2016 pertaining to assessment year 2012-13. The revenue has raised the following grounds of appeal :-

1. Whether on the facts and in the circumstances of the case and in law, Id. CIT (Appeals) was justified in deleting the addition of Rs. 93,48,826/- made by the AO on account of disallowance of depreciation claimed ignoring the fact that civil structures and internal/external power lines do not constitute the plants.
2. (a) Whether on the facts and in the circumstances of the case and in law, Id. CIT (Appeals) was justified in deleting the addition of Rs. 15,29,425/- made by the AO for depositing the employee's contribution to PF & ESI beyond the prescribed time limit provided in the respective Acts.

(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the employee's contribution to PF & ESI are governed by the provisions of Section 43BG and not by section 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961.

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment was completed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) vide order dated 17.03.2015. The AO while assessing the income, made additions on account of PF and ESI for not making the payment within the prescribed dates as prescribed in the respective Act and also made disallowance of excess depreciation claimed, apart from other disallowances. Aggrieved by this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions, partly allowed the appeal. While allowing the appeal, the Id. CIT (A) allowed the claim of the assessee in respect of PF & ESI by following the judgments of the Hon'ble Jurisdictional High Court in the cases of Jaipur Didhyut Vithran Nigam Ltd. 265 CTR 62 (Raj.), CIT vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131 (Raj.) and the order of ITAT Jaipur. The Id. CIT (A) also partly allowed the claim of depreciation after considering the submissions and following his earlier order for the A.Y. 2011-12 in the assessee's own case. Aggrieved, the revenue has filed the present appeal before this Tribunal.
3. The Id. D/R submitted that the Id. CIT (A) was not justified in deleting the additions. He supported the order of the A.O.

3.1. On the contrary, the Id. Counsel for the assessee reiterated that both the issues are covered in favour of the assessee by the various judgments of Hon'ble High Courts and the decisions of ITAT Jaipur.

3.2. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. In respect of Ground No. 1, we find that the similar issue has been decided by the Coordinate Bench of the Tribunal vide its order dated 17.06.2016 for the immediately preceding year 2011-12 by observing in para 4.3 as under :-

"4.3. We have heard rival contentions and perused the material available on record. The Id. CIT (A) has decided this issue in para 3.4.1 to 3.4.6 of her order by observing as under :-

"3.4.1. I have considered the facts of the case, assessment order and the written submissions of the appellant. The facts of this issue are similar to the facts in the preceding year (Assessment Year 2010-11). In Assessment Year 2020-11, the CIT (A)-II, Jaipur (Appeal No. 02/13-14) has also decided the matter by holding as under :-

"The issue in question is whether the foundation, plinth structure, crane platform, control room for windmill can be considered as 'building' or is an integral part of windmill. So also, whether electrical items and internal / external lines fall under the head plant and machinery distinct from a windmill. I have perused the case laws cited by the appellant and the Assessing Officer. The case laws which directly deal with the issue at hand are :

- 1. DCIT VS. Aminity Developers and builders – ITA No. 1505/PN/2008-09 A.Y. 2008-09 (ITAT-Pune).*
- 2. Poonawala Finvest & Agro (P) Ltd. vs. ACIT – ITA No. 188 of 2006 dated 26.06.2008 (ITAT-Pune)*

3. *CIT-III, Ahmedabad vs. Parry Engineering and Electronics Pvt. Ltd. – Tax Appeal No. 604 of 2012 dated 29.01.2013 (High Court, Gujarat).*

3.4.2. It has been held in the case of Poonawala Finvest (supra)- *"the emphasis for granting higher rate of depreciation as far as civil construction work is concerned, the necessity was to examine the functional test of the said structure. A categorical evidence has to be placed that the structure is not a building but it is an integral part of plant and machinery ... As far as the question of depreciation in respect of 'transformer up to DP structure' was concerned, the appellant has paid certain amount for the purpose of supplying of electrical items like transformer up to DP structure, internal line up to metering. This gadget was for transmission of electrical power generated up to sub-station of MSEB at site. The electrical energy so produced by the windmill was a waste if it was not transmitted to MSEB sub-stations. The function of such unit was that the electricity so generated was required to be transferred and transmitted to cable line up to sub-station, where the actual units so generated were stored and metered. Since this was the function of transformer up to DP structure, hence it ought to be held as an integral part of the windmill."*

3.4.3. In the case of Aminity Builders And Developers (supra) it has been held that – *"there should not be quarrel that civil work is involved in the "erection of the foundation, but every civil work cannot be treated as civil work as required for bringing construction. In our opinion, cost on the foundation of the wind mill is eligible for the depreciation at the rate 80% or the rate which is applicable to the wind mill as it is integral part of cost of wind mill erection."*

3.4.4. It has been held in the case of Parry Engineering & Electronics Ltd. (supra) that – *"Windmill would require a scientifically designed machinery in order to harness the wind energy to the maximum potential. Such*

device has to be fitted and mounted on a civil construction, equipped with electric fittings in order to transmit the electricity so generated. Such civil structure and electric fittings, therefore, it can be well imagined, would be highly specialized. Thus, such civil construction and electric fitting would have no use other than for the purpose of functioning of the windmill. On the other hand, it can be easily imagined that windmill cannot function without appropriate installation and electrification. In other words, the installation of windmill and the civil structure and the electric fittings are so closely interconnected and linked as to form the common plant. As already noted, the legislature has provided for higher rate of depreciation of 80 per cent on renewable energy devises including windmill and any specially designed devise, which runs on windmill. The civil structure and the electric fitting, equipments are part and parcel of the windmill and cannot be separated from the same. The assessee claim of higher depreciation on such investment was, therefore, rightly allowed".

3.4.5. In view of the above judgments, it is held that foundation, electrical items internal / external lines are an integral part of the windmill and are so closely interconnected and linked with the windmill so as to form a common 'plant' as windmill. Therefore, depreciation of the above items has to be allowed at the same rate as windmill.

3.4.6. In respect to the civil work for the control room etc. it has been held in the case of Poonawala Finvest (supra) – "*In the instant appeal nothing was on record to establish that on the touchstone of functional test the control room or site development expenditure or even internal roads, were so designed that they could only be used for power generation as done by the windmill and meant for no other use. There was nothing on record, such as a report from a qualified person to establish that the site construction of control room, internal road, etc, was designed in such a manner to facilitate the power generation and distribution of windmill.*" In this case also, the appellant has not been able to establish that the civil

work for the control room, plinth platform or the crane platform is an integral part of the plant and machinery of windmill. The civil work for the control room is a mere structure to house the equipment of the control room since the civil work of the control room has not been specially designed for a windmill. Therefore, depreciation on the civil work for the control room, plinth platform and crane platform, shall be allowable at the rate applicable to a 'building'.

Following the above judgment of my predecessor CIT (A)-II, in the assessee's own case for the Assessment Year 2010-11. The depreciation on foundation, electrical items, internal / external lines are an integral part of the windmill and depreciation is allowed at the same rate as windmill, and depreciation on the civil work for the control room, plinth platform and crane platform, shall be allowable at the rate applicable to a 'building'. The ground of appeal is partly allowed."

The Id. CIT (A) has given a detailed finding of fact. The revenue has not controverted these findings. We, therefore, find no infirmity in the order of Id. CIT (A), which is hereby upheld. The ground of the revenue is rejected."

In view of the above discussion, we find no merit in the ground of the revenue. The same is hereby rejected. The order of the Id. CIT (A) is upheld.

3.3. In respect of Ground No. 2 relating to delayed payment of PF & ESI, we find that the issue is squarely covered by the judgments of the Hon'ble Rajasthan High Court in the case of Jaipur Vidhyut Vithran Nigam Ltd. 265 CTR 62 (Raj.) and CIT vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131 (Raj.) and also by the Coordinate Bench of the Tribunal, Jaipur in the assessee's own case. Therefore, respectfully following the judgments of the Hon'ble Jurisdictional High Court and the Coordinate Bench, we affirm the order of Id. CIT (A). The ground of the revenue is rejected.

4. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 30.01.2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य/Accountant Member
Jaipur
Dated:- 30/01/2017.
Das/

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant- The ACIT Circle-6, Jaipur.
2. The Respondent – M/s. Gangaur Export Pvt. Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1034/JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

