

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 6222/DEL/2018 (A.Y 2005-06)
ITA No. 6223/DEL/2018 (A.Y 2006-07)
ITA No. 6224/DEL/2018 (A.Y 2007-08)
ITA No. 6225/DEL/2018 (A.Y 2008-09)**

BSES Rajdhani Power Ltd. BSES Bhawan, Nehru Place, New Delhi AAGCS3187H (APPELLANT)	Vs	ACIT Circle 5(1) C. R. Building, New Delhi (RESPONDENT)
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**ITA No. 6226/DEL/2018 (A.Y 2005-06)
ITA No. 6227/DEL/2018 (A.Y 2006-07)
ITA No. 6228/DEL/2018 (A.Y 2007-08)
ITA No. 6229/DEL/2018 (A.Y 2008-09)**

BSES Yamuna Power Ltd. BSES Bhawan, Nehru Place, New Delhi AABCC8569N (APPELLANT)	Vs	ACIT Circle 5(1) C. R. Building, New Delhi (RESPONDENT)
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Appellant by	Sh. Ajay Vohra, Sr. Adv, Sh. Rohit Jain, Adv, Ms. Deepanshree Rao, CA & Sh. Vibhu Gupta, CA
Respondent by	Sh. Sanjay Goyal, CIT(A) DR

Date of Hearing	18.03.2019
Date of Pronouncement	25.03.2019

ORDER

PER SUCHITRA KAMBLE, JM

These eight appeals are filed by the respective assesseees against the order dated 26/07/2018 passed by CIT(A)-2, Aayakar Bhawan, New Delhi for Assessment Year 2005-06, 2006-07, 2007-08, 2008-09 respectively.

2. In this group of 8 appeals, the issue is common. Therefore, we are reproduced grounds of appeal being ITA No. 6222/Del/2018. The grounds of appeal are as under:-

“1. That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of the assessing officer in passing an order which was in contravention to the specific directions issued by the Hon’ble ITAT in it’s order dated 05.10.2015.

The ITAT while deciding on whether Energy Meters were eligible for depreciation at the higher rate of 80% had set aside the matter to the assessing officer with a clear direction to verify whether a breakup between electronic and mechanical meters had been submitted by the appellant and after such verification to all depreciation on Electronic/Energy Meters at the higher rate 80% after allowing the assessee an opportunity of being heard.

2. That the CIT(A) erred on facts and in law in not holding that the order passed by the assessing officer whereby he proceeded to re- adjudicate the issue of depreciation on Energy Meters was in blatant violation of the binding decision/findings of the ITAT and the Delhi High Court and was therefore bad in law.

3. That the CIT(A) erred in facts and in law in holding that the assessing officer was correct in seeking a report from the Bureau of Indian Standards (BIS) in the interest of justice and based on such report in holding that the Energy Meters were merely energy measuring devices and were not energy efficient and therefore did not qualify for higher rate of depreciation as prescribed for Energy Saving devices.

ITAT in the order dated 05.10.2015 has clearly held that as per the provisions of clause III (Plant and Machinery) (8)(ix) of part A to the rates of Depreciation in the Appendix to the I.T. Rules ‘Meters for measuring electric energy’ are eligible for higher rate of depreciation of 80% and there is no need for any other condition to be satisfied in terms of being energy efficient or otherwise.

4. That the CIT(A) erred in facts and in law in holding that since Energy Meters were not eligible for higher rate of depreciation, Bus Bar Chambers were also not eligible for higher rate of depreciation for the same reason. Again this is against the clear directions given by the ITAT in it’s order dated 05.10.2015 whereby the matter was set aside to the assessing officer merely

to ascertain whether Bus Bar Chambers were an integral part of the Energy Meters and if so to allow depreciation at the higher rate of 80%.”

3. The facts and the issues are identical. Therefore, the facts of Assessment Year 2005-06 in ITA No. 6222/Del/2018 are taken hereinabove.

4. The assessee company is engaged in business of distribution of electricity/power. The assessee company filed its original return on 30/10/2005 declaring 'NIL' income at the computation of income. The return was processed u/s 143(1) of the Income Tax Act, 1961 on 30/3/2007. Notice u/s 143(2) dated 9/10/2016 was served upon the assessee company selecting the case for scrutiny. Questionnaire was served upon the assessee on 16/7/2007 along with the notice u/s 143(2) asking to submit the required information by 30/07/2007 by the Assessing Officer. The assessment was completed vide order dated 31/12/2007 under the normal provisions of the Act at an income of Rs. Nil after adjusting brought forward losses of Rs. 58,79,39,870/- which was subsequently rectified at Rs. NIL after adjusting brought forward losses of Rs. 78,08,74,150/- vide rectification order dated 5/3/2010 passed u/s 154/143(3). The additions made to the returned income during the course of assessment included a disallowance of depreciation on energy meters of Rs.21,33,46,193/-. The allowance of depreciation on energy meters was restricted to 15% as applicable to normal 'Plant & Machinery' as against 80% claimed by the assessee which was applicable to 'Energy Saving Devices'. The company filed appeal before the CIT(A) against the various additions/disallowances made in the Assessment Order. The CIT(A) allowed the relief on a number of issues and the assessed profit for the year was determined at Rs. NIL after adjusting brought forward losses of Rs.72,32,98,559/- vide appeal effect order dated 23/05/2016 passed u/s 215/143(3). However, the CIT (A) confirmed the disallowance held in respect of depreciation on Energy Meters. The assessee Company filed an appeal before the Tribunal against the above order of CIT (A) confirming the disallowance of

depreciation on energy meters. The Tribunal in its order dated 5/10/2015 held that the assessee Company had been successfully able to demonstrate that it was very much entitled to claim depreciation on energy meters @ 80%. However, based on the observations of the CIT (DR) that more than 60% of the Company's meters were mechanical meters, the Tribunal restored the matter to the file of the Assessing Officer to verify and allow the claim of depreciation @ 80% on electronic meters/energy meters after affording opportunity to the assessee of being heard. Further, regarding the Company's claim of higher depreciation on Bus Bar Chambers @ 80%, the Tribunal restored the issue to the file of the Assessing Officer to verify as to whether it is an intricate/integral part of meters without which the meter cannot function after affording opportunity to the assessee of being heard. The ITAT order was subsequently confirmed by the Hon'ble Delhi High Court vide order dated 14.09.2016. The Assessing Officer complied with the directions of the Tribunal by passing an order dated 31/3/2017 u/s 254/143(3) whereby it has been held that an energy meter is a measuring instrument and not an appliance which can be classified as energy association based on energy consumption and hence was not eligible for depreciation at the higher rate of 80%. Accordingly, the Assessing Officer sustained the additions/disallowance made by his predecessor Assessing Officer and has not given any relief to the assessee on the issue.

5. Being aggrieved by the same, the assessee filed appeal before the CIT (A) and the CIT(A) also dismiss the appeal of the assessee.

6. The Ld. AR submitted that the assessee is a company incorporated under the Companies Act, 1956 and is inter-alia, a distribution licensee involved in the business of distribution and retail supply of electricity in the specified area of South and West Delhi in the NCT of Delhi. During the assessment years under consideration, addition was made to the returned income of the assessee by restricting the depreciation on energy meters to 25%

/ 15% as applicable to normal 'Plant & Machinery' as against 80% claimed by the assessee which was applicable to 'Energy Saving devices'. The assessee filed an appeal before CIT(A) who confirmed the above disallowance made in respect of depreciation on Energy Meters. On further appeal filed before the ITAT against the aforesaid order of the CIT(A), the ITAT vide its consolidated order dated 05.10.2015, categorically held that depreciation @ 80% was available in respect of simpliciter electricity/energy 'measuring meters' and there was no additional requirement of such meters being energy saving devices. It was held that the assessee had been successfully able to demonstrate that it was very much entitled to claim depreciation on energy meters @ 80%. However, based on the contention raised by the CIT(DR) that more than 60% of the Company's meters were mechanical meters, the ITAT restored the matter to the file of the assessing officer with the restricted direction to verify and allow the claimed depreciation @80% only in respect of electronic meters/energy meters after affording opportunity to the assessee of being heard. Further, regarding the assessee's claim of higher depreciation on bus bar chambers @ 80%, the ITAT restored the issue to the file of the assessing officer to merely verify as to whether it is an intricate/integral part of meters without which the meter cannot function and accordingly allow depreciation on the same. The aforesaid order of the ITAT was subsequently confirmed by the Hon'ble Delhi High Court vide order dated 14.09.2016. In pursuance of the aforesaid order of the ITAT, the assessing officer passed the impugned order under section 254/143(3) of the Act, giving effect to the directions of the ITAT. However, the assessing officer, disregarding the specific mandate of the ITAT (affirmed by the High Court) and the bifurcation provided by the assessee, traversed beyond jurisdiction and proceeded to re-adjudicate the issue afresh based on some ex-parte report called for from the Bureau of Indian Standards (BIS). In the impugned order, the Assessing Officer, disregarding the specific directions of the ITAT (affirmed by the High Court) and merely relying on the Report of BIS held that an Energy Meter is merely a measuring instrument and not an appliance which can be classified as energy

efficient and hence was not eligible for depreciation at the higher rate of 80%. Accordingly, the assessing officer proceed to sustain the disallowance made by his predecessor and has not given any relief to the assessee on the said issue. The said order of the assessing officer was affirmed by the CIT(A) against which the assessee has filed the present appeal(s). The Ld. AR submitted, that the short issue for adjudication before the ITAT, is whether the Assessing officer, traversed beyond the limited mandate/direction of the Tribunal, as affirmed by Hon'ble High Court to re-adjudicate the issue afresh thereby exceeding his jurisdiction and hence the impugned order is illegal and bad in law, especially considering the fact that the assessing officer was only required to verify and allow depreciation claimed by the appellant @ 80% in respect of electronic meters/energy meters and exclude/deny claim of depreciation in respect of mechanical meters.

7. The Ld. DR relied upon the assessment order and the order of the CIT (A).

8. We have heard both the parties and perused the material available on record including the Tribunal's directions in earlier order dated 5/10/2015. The Tribunal in its earlier order dated 05.10.2015 held as under:

"12.4 the submission of the assessee that specifications contained in the energy meters installed by the assessee company also included the specific features of "Time of Day" has not been rebutted by the Revenue. We find that in the depreciation schedule for the assessment year 2006-07 and onwards specifically/separately covers feature of "Time of Day" under Item III(8)(ix)-E(i). Under the above facts and circumstances especially in view of above referred schedule read with sec. 32 of the Income-tax Act, we find that the assessee has been successfully able to demonstrate that it was very much entitled to claim depreciation on energy meters @ 80% and without appreciating the above schedule, the authorities below were not justified in disallowing the claimed depreciation on these assets on the ground that the

energy meters did not facilitate in conservation of energy. The Assessing Officer had, however, pointed out that more than 60% of the meters are mechanically advanced meters which did not have any special feature. To meet out this objection and its submissions before the Learned CIT(Appeals) that most of the meters are energy saving meters, the Learned AR has referred page No. 75 of the supplementary paper book i.e. copy of the relevant extracts of the tax audit report of the assessee for the assessment year under consideration reflecting statement of particulars including bifurcation of expenses between normal meter and electronic meters. We thus set aside the matter to the file of the Assessing Officer to verify and allow the claimed depreciation at the rate of 80% on electronic meters/energy meters only after affording opportunity of being heard to the assessee.

12.5 Regarding the claimed higher depreciation on the “bus bar chamber”, the Learned AR submitted that these are devices through which connection from overhead line/underground cable is provided to the meters and the said device forms integral/inextricable part of the meters without which the meter cannot function. The authorities below have denied the claimed higher depreciation on this instrument on the basis that these are not energy saving device. We set aside this matter to the file of the Assessing Officer to verify the above claim of the assessee that ‘bus bar chamber’ forms integral/inextricable part of the meters without which a meter cannot function and allow the depreciation thereupon accordingly after affording opportunity of being heard to the assessee. The ground No. 1 of the appeal preferred by the assessee is accordingly allowed for statistical purpose.”

This order of the Tribunal was challenged before the Hon’ble Delhi High Court by the Revenue wherein the Hon’ble High Court vide order dated 14.09.2016 dismissed the appeals of the Revenue and held as under:

“6.As far as the first question with respect to rules of depreciation is concerned, we notice that the ITAT went by a plain reading of the rule of concerned provision i.e. Part A, under Appendix 1, Clause III (8) (ix) (B)(e) of the Income-tax Rules, 1962. The revenue had urged that the appropriate rate

of depreciation would be 25% as against which the assessee had claimed 80% depreciation in view of the rule.

7. This court is of the opinion that having regard to the fact that ITAT went by the text of the rule itself, in the absence of any other indication within the statute with respect to its inapplicability, the impugned ruling cannot be faulted. No question of law arises on this aspect.”

Thus the Tribunal categorically held that depreciation at 80% was available in respect of simplicitor electricity/energy measuring meters and there was no additional requirement of such meters being energy saving devices. The Tribunal held that the assessee has successfully able to demonstrate that it was very much entitled to claim depreciation on energy meters @ 80%. Thus, the Tribunal has categorically given a finding on depreciation on energy meters @ 80% as only this much has to be verified by the Assessing Officer as to whether it is inextricable/integral part of meters without which the meter cannot function and accordingly allow depreciation on the same. But instead of verifying these aspects, the Assessing Officer has given a finding on the basis of Bureau of Indian Standards Report and relying on the same held that energy meter is merely a measuring instrument and not appliances which can be classified as energy efficient and hence was not eligible for depreciation at the higher rate of 80%. The Ld. AR has given plethora of decisions including the decision of the Hon'ble Supreme Court in case of Union of India Vs. Kamlakshi Finance Corporation Ltd. AIR 1992 SC 711 wherein it is held that orders of High Court/ Appellate Authorities are binding and revenue interest is no excuse for failure of lower authorities to follow those orders as the law provides appeal procedure for safeguards. The principles of judicial discipline require that the orders of the higher appellate authorities shall be followed unreservedly by the subordinate authorities. The Assessing Officer is duty bound to follow the directions of the Tribunal in its true spirit and should have not gone beyond what has been directed to be verified by the Tribunal to the Assessing Officer. Therefore, the assessment order is quashed and the appeal

of the assessee is allowed. All these appeals have common issues therefore, all the appeals are allowed.

9. In result, all the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 25th MARCH, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 25/03/2019
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.03.2019
Date on which the typed draft is placed before the dictating Member	19.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	25.03.2019
Date on which the final order is uploaded on the website of ITAT	25.03.2019
Date on which the file goes to the Bench Clerk	25.03.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	