

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री इंद्ररी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Inturi Rama Rao, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 2417/Chny/2018
निर्धारण वर्ष/Assessment Year: 2015-16

The Deputy Commissioner of
Income Tax,
Corporate Circle 4(2),
Chennai 600 034.

M/s. Kanishk Metal Recycling Limited,
Vs. No. 7, Thiru Vi Ka 3rd Street,
Royapettah High Road, Mylapore,
Chennai 600 004.

[PAN: AAECK4041Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mrs. C. Vatchala, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Ganesan, C.A.
सुनवाई की तारीख/ Date of hearing : 27.06.2019
घोषणा की तारीख /Date of Pronouncement : 19.07.2019

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 8, Chennai dated 07.06.2018 relevant to the assessment year 2015-16. The only effective common ground raised in both the appeals of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance of depreciation.

2. In the depreciation statement for the assessment year 2015-16, the assessee has claimed depreciation of ₹.89,21,812/- @ 80% on the Opening

Written Down Value of ₹.1,11,52,265/- on Wind Mill (Plant & Machinery). However, in the assessment made under section 143(3) of the Act for the assessment year 2014-15, the closing written down value of the wind mills was worked out at ₹.1,32,340/- only which has to be taken as the opening WDV for the assessment year 2015-16. When AR of the assessee was asked to explain why the WDV of the Wind Mills should not be taken at ₹.1,32,340/- as per the assessment order for the assessment year 2014-15, the AR of the assessee has not filed any explanation except stating that the assessment order for the A.Y. 2014-15 has been contested before the appellate authority. On verification, the Assessing Officer found that the Id. CIT(A) has decided the issue in favour of the assessee and moreover, the Department's appeal before the ITAT is pending for finality. Disputing the assessment before the appellate authority, cannot alter the written down value of the asset adopted by the Assessing Officer until and unless the Appellate Authority reverses the stand taken by the Assessing Officer. As such, the opening written down value of the asset wind mills for the assessment year under consideration was taken at ₹.1,32,340/- against the written down value of ₹.1,11,52,265/- taken by the assessee-company. Accordingly, the depreciation @ 80% on the opening WDV of ₹. 1,32,340/- was worked out to ₹.1,05,872/- only and the excess depreciation of ₹.88,15,940/-(₹.89,21,812 – ₹.1,05,872) claimed by the assessee on the

Wind Mills was disallowed and added back to the total income of the assessee. On appeal, after considering the submissions of the assessee by following the appellate order for the assessment years 2013-14 & 2014-15 as well as Tribunal order in I.T.A. Nos. 750 & 751/Mds/2017 dated 30.11.2017 in the case of Gita Wind Energy, the Id. CIT(A) directed the Assessing Officer to allow the claim of depreciation.

3. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. By filing copy of the order of the Tribunal in I.T.A. Nos. 2380 & 3049/Chny/2017 dated 27.11.2018 for the assessment years 2013-14 & 2014-15 in assessee's own case, by way of written submission, the Id. Counsel for the assessee prayed for similar direction for the assessment year under consideration as was rendered in assessee's own case for earlier years. We have perused the order of the Tribunal passed in assessee's own case for the assessment years 2013-14 & 2014-15, wherein, it was observed and held as under:

“4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including valuation report of the Approved Panel Valuer of the State Bank of India and other documents. In the appellate order, the Id. CIT(A) has given a finding that “the Assessing Officer did not raise any objections as to the market value determined by the Registered Valuer of the State Bank of India”. However, we find from the assessment order that there was no mention about the valuation report filed by the assessee. When the Bench specifically asked, the Id. Counsel for the assessee could not produce evidence for filing the valuation report before the Assessing Officer. Similarly, when the

Department was asked to get the details from the assessment records, the ld. DR filed a letter dated 16.11.2018 submitted by the Assessing Officer [ACIT, CC-4(2)] and the content of the letter is reproduced as under:

“On verification of the miscellaneous records for the respective assessment years, it is seen that the assessee company has not filed any valuation report during the assessment proceedings. However, the assessee has filed Paper Book in respect of A.Yr. 2013-14 with the valuation report on 21.02.2018.”

The assessment for the assessment years 2013-14 and 2014-15 were completed on 31.03.2016 and 30.06.2016 respectively. It is clear from the above letter that the assessee has filed the valuation report before the Assessing Officer only after the Department filed the appeals for both the assessment years before the Tribunal. More so, if at all the valuation reports are filed before the ld. CIT(A), in the appellate order, there was no mention about obtaining remand report from the Assessing Officer and thus, the ld. CIT(A) erroneously made a mention that “the Assessing Officer did not raise any objections as to the market value determined by the Registered Valuer of the State Bank of India”. Accordingly, we set aside the order of the ld. CIT(A) and remit the matter back to the file of the Assessing Officer to examine the valuation reports, etc. and decide the issue afresh for both the assessment years by giving an opportunity of being heard to the assessee.”

4. Pending consideration of valuation report filed by the assessee before the Assessing Officer, the Tribunal has remitted the matter back to the file of the Assessing Officer to examine the valuation reports, etc. for the assessment 2013-14 & 2014-15 and decide the issue afresh. The ld. DR has not made any objection in remitting the issue back to the file of the Assessing Officer for the assessment year under consideration. Accordingly, for assessment year 2015-16 also, we remit the matter back to the file of the

Assessing Officer to decide the allowable depreciation after considering the valuation report submitted for the earlier assessment years.

5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 19th July, 2019 in Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 19.07.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.