आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./**ITA No.3453/Chny/2018**
निर्धारण वर्ष **/Assessment Year: 2012-13**

M/s. Indowind Energy Ltd., Kothari Building, 4th Floor, No.14, Mahatma GandhiRoad, Nungambakkam, Chennai – 600 034. **[PAN: AAACI-1806-M]**	**Vs.**	**The Dy. Commissioner of Income Tax,** Corporate Circle-2(2), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing	:	13.12.2023
घोषणा की तारीख /Date of Pronouncement	:	05.01.2024

आदेश **/ O R D E R**

PER MANOMOHAN DAS, J.M:

This appeal by the Assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-6, Chennai (CIT(A) dated 25-10-2018 and pertains to the assessment year 2012-13. The assessee has not pressed the grounds No.4, 5, 8, 9, 11 & 18. The remaining effective grounds of appeals of the assessee are as under:

"1. The order of the Commissioner of Income Tax (Appeals) - 6, Chennai dated 25.10.2018 in I.T.A.No.112/CIT(A)-6/2015-16 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming partly the disallowance of notional expenses for earning tax free income/for maintaining tax free portfolio within the scope of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the provisions of section 14A of the Act had no application and ought to have appreciated that in the absence of requisite satisfaction on the incurring of expenses for earning tax free income/for maintaining tax free portfolio, the mechanical application of section 14A of the Act should be reckoned as bad in law.

6. The CIT(Appeals) failed to appreciate that the presumption of the applicability of section 9(1)(vii) of the Act to the transaction under scrutiny was wholly unjustified while vitiating the findings in para 8.3.5 of the impugned order.

7. The CIT(Appeals) failed to appreciate that having not examined the provisions in section 9(1)(vii) and the related provisions in the DTAA, the sustenance of the said technical addition was wrong, erroneous, unjustified, incorrect and not sustainable in law.

10. The CIT(Appeals) erred in sustaining the disallowance of interest on delayed remittance of TDS amounting to Rs.38,803/- on the application of section 40(a)(ii) of the Act in the computation of taxable total income without assigning proper reasons and justification.

12. The CIT(Appeals) went wrong in recording the findings in para 10.3.5 of the impugned order without assigning proper reasons and justification.

13. The CIT(Appeals) erred in sustaining the disallowance of being the expenses accounted as well as paid in the previous year relating to the Assessment Year under consideration pertaining to operating and maintenance charges in the computation of taxable total income without assigning proper reasons and justification.

14. The CIT(Appeals) failed to appreciate that the reckoning of such expenses as prior period expenses based on the accounting entry for sustaining the disallowance of such expenses in the computation of taxable total income was wrong, erroneous, unjustified, incorrect and not sustainable in law.

15. The CIT(Appeals) went wrong in recording the findings in paras 10.3.13 & 10.3.14 of the impugned order without assigning proper reasons and justification.

*16. The CIT(Appeals) erred in sustaining the disallowance of the amount **(Rs.3,08,81,612/-)** considered for reversal of notional income offered for taxation in the preceding assessment year pertaining to the carbon credit in the computation of taxable total income without assigning proper reasons and justification.*

17. The CIT(Appeals) went wrong in recording the findings in paras 10.3.16 to 10.3.19 of the impugned order without assigning proper reasons and justification and ought to have appreciated that having accepted the computation of taxable total income including the notional income offered from carbon credit in the preceding assessment year, there should be any necessity for adjudication of nature of such credit/income for the purpose of reversal of such notional income in the previous year relating to the Assessment Year under consideration.

19. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law."

2. The brief facts of the case are that the assessee is a company and engaged in the business of Power generation and commissioning of Wind Mill. The assessee filed its return of income for the assessment year 2012-13 electronically on 29-12-2012, claiming a loss of Rs. 9,76,68,833/-. The return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and statutory notices were served upon the assessee. The assessee in compliance to that statutory notices appeared and furnished details. The ld. Assessing Officer [AO] considered the details

submitted by the assessee and completed the assessment vide order dated 31-03-2015 by making various disallowances.

3. Being aggrieved, the assessee filed appeal before the ld. CIT(A).The ld. CIT(A) vide order dated 25-10-2018 partly allowed the appeal of the assessee.

4. Being aggrieved, the assessee filed the present appeal before the Tribunal. Heard the representatives of both the parties and perused the materials on record. We adjudicate the appeals of the assessee as under:

5. Disallowance u/s 14A r.w.r. 8D- Rs. 7,46,393/-:

The ld. AO during the assessment proceedings noticed that the assessee had shown of Rs. 4,45,95,891/- which are exempt income yielding investments of the assessee. As per section 14A of the Act no expenditure incurred for the purpose of earning an exempt income shall be allowed against the taxable profits. The ld. AO believed that the assessee incurred some expenditure towards maintaining the investments. Accordingly, the ld. AO disallowed an amount of Rs.7,46,393. The claim of the assessee is that no exempt income was

earned during the year under consideration. The ld. CIT(A) accepted the submissions of the assessee that Section 14A of the Act is not applicable, however, the ld. CIT(A) partly allowed the ground of the assessee finally. The ld. CIT(A) vide para No. 4.3.2 and 4.3.3 of his order considered a number of case laws including the decision of the Hon'ble jurisdictional High Court of Madras in the case of *Chettinad Logistics Pvt. Ltd. TCA No. 24 of 2017 dated 13-03-2017* and decided the issue that, Respectfully following the Jurisdictional Hon'ble Madras High Court decision as well as the other decisions cited above, it is hereby held that no disallowance can be made if the appellant does not have any exempt income during the year under consideration".

6. The ld. CIT(A) has not observed that the assessee has earned exempt income during the year under consideration. The ld. CIT(A) observed that if the appellant does not have any exempt income no disallowance can be made. Therefore, it is proved that the assessee did not earn any exempt income during the year under consideration. We observe that the assessee has succeeded in convincing the ld. CIT(A) that no exempt income was earned during the year under consideration. As no exempt income was earned by the assessee, full relief has to be given to the assessee instead of partial relief.

Accordingly, we decide the issue of disallowance of Rs. 7,46,393/- made u/s 14A r.w.r 8D in favour of the assessee fully and set aside the order of the ld. CIT(A) dated 25.10.2018 as well as the order of the ld. AO dated 31-03-2015 to that extent as related to disallowance of Rs.7,46,393/- and direct the ld. AO to delete the addition of Rs.7,46,393/- from the total income of the assessee.

7. Listing charges paid to Bank of New York – Rs. 4,87,247/-:

The facts of the case on this issue was that the assessee paid Rs. 4,87,247/- to the Bank of New York as shares listing charges in Luxembourg Exchange. No TDS was deducted by the assessee while paying of this sum to the Bank of New York. The ld. CIT(A) vide para No. 8.3.5 and para no. 8.3.7 of his order upheld the disallowance made by the ld. AO. The claim of the assessee is that the payment was made for services rendered outside India which attracts no TDS. The further claim of the assessee is that presumption of rendering technical services to the assessee by the New York Bank is also ruled out so as to apply the provisions of Section 9(i) (vii) of the Act.

8. The ld. CIT(A) observed that the Bank of America provided various services to the assessee which are technical in nature. The Bank of New York provided services to the assessee as an expert and

accordingly, the paid amount of Rs. 4,87,247/- was the subject matter of section 9(i)(vii) of the Act and the TDS was to be deducted by the assessee. So, disallowance of that amount of Rs. 4,87,247/- by the ld. AO was upheld by the ld. CIT(A). Before us, the assessee submitted that the provisions of section 9(i)(vii) of the Act as well as provisions of DTAA were not examined by the lower authority while sustaining the technical addition.

9. We observe that the provisions of Section 9(i)(vii) of the Act was examined by the ld. CIT(A), but examination of the provisions of DTAA on the issue was not done. Therefore, it is our considered opinion that this issue of addition of Rs.4,87,247/- on account of technical services provided to the assessee should be re-examined by the ld. AO by taking into consideration of the DTAA provisions also. Accordingly, we direct the ld. AO to re-examine the issue in the light of the provisions of DTAA after giving a reasonable opportunity of being heard to the assessee. Thus, we allow this ground of the assessee and set-aside the addition till the re-examination of the issue by the ld. AO. The ld. AO shall pass an appropriate order after re-consideration of the issue. Accordingly, appeal of the assessee on this issue is allowed for statistical purposes only.

10. Disallowance of Rs. 33,74,251/-:

The claim of Rs. 33,74,251/- by the assessee is related to the prior period expenditure. The assessee, however, paid the amount during the previous year. The claim of the assessee is that due to dispute on the bill amount, the same could not be paid during the relevant period. The ld. CIT(A) observed that the assessee did not make any provision in the previous year 2010-11 in respect of the prior period expenditures. No revised return was also filed by the assessee for the Assessment Year 2011-12 incorporating these expenses in its profit and loss account upon finalization of the dispute. Further, each year is a separate and self- contained period of time and losses and expenses incurred before and after that year cannot be allowed in assessing the income of that particular year. Accordingly, the ld. CIT(A) dismissed this ground of the assessee and upheld the order of the ld. AO.

11. After carefully observing the issue, we find that the observation of the ld. CIT(A) is correct. The prior period expenditure cannot be allowed in assessing the income of a particular year. We upheld the observations of the ld. CIT(A) on this issue of prior period expenditure.

Thus, this ground of the assessee on prior period expenses is dismissed.

12. Writing off of Carbon Income of Rs. 3,08,81,612:

On this disallowance of carbon income, the claim of the assessee is that it had been recognizing income from expected sale of carbon credits based on the generation of electricity from the 18 MW wind farm project at Karnataka in the earlier years. But the said project was not recognized for the period for which the income was included. Therefore, this had to write off due to non-recognition of the project. Accordingly, the same is written off and reversed in the accounts under “prior period items” in the year under consideration. However, the ld. CIT(A) observed that carbon credit is a capital in nature hence, write off / reversal of income as revenue loss cannot be allowed. Thus, the ground of the assessee is dismissed.

13. We observe that, the assessee from the year of 2007-08 to 2011-12had offered income from carbon credit amounting to Rs.3,09,67,422/- and the Department had accepted it as other income. Now the assessee write off this amount of Rs. 3,09,67,422/-due to non-recognition of the project. It is therefore, our considered opinion is

that the treatment which was given by the Department to the income of the assessee on carbon credit during the last five years i.e. from the year 2007-08 to 2011-12, the same treatment has to be given by the Department. Accordingly, we remand this issue to the file of the ld. AO to re-examine this issue of disallowance on carbon credit afresh. Accordingly, we set-aside the order of the ld. CIT(A) on this issue. Thus, we decide this issue in favour of the assessee for statistical purposes only.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 05th January, 2024.

Sd/-	**Sd/-**
(मंजुनाथ. जी)	**(मनोमोहन दास)**
(Manjunatha. G)	**(Manomohan Das)**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य/Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 05th January, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF