

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

आयकरअपीलसं. /I.T.A.No.581/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. Senthil Energy Pvt.Ltd. 6 th floor, Senthil Towers, Avinashi Road, Coimbatore-641 018.	Vs	Income Tax Officer, Corporate Ward-4, Coimbatore.
PAN: AASCS 7231G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. N.V.Balaji, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.Suresh Periasamy,JCIT

सुनवाईकीतारीख/Date of hearing	:	11.03.2021
घोषणाकीतारीख /Date of Pronouncement	:	28 .04.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the learned CIT(A)-1, Coimbatore dated 21.01.2019 and pertains to assessment year 2015-16.

2. The assessee has raised following grounds of appeal:-

1. *The order of the Hon'ble Commissioner of Income tax (Appeals) is opposed to law, facts and circumstances of the case and against the principles of natural justice.*
2. a) *The Hon'ble Commissioner of Income Tax (Appeals) erred in upholding the action of the earned assessing officer in denying the higher rate of depreciation on windmills installed prior to 01.04.2012.*

b) The Hon'ble Commissioner of Income tax (Appeals) failed to appreciate that the term 'installed' is different from acquired and installed and the condition prescribed in New Appendix is only 'installed'.

In view of the above grounds and such other additional grounds as may be adduced at time of hearing, it is prayed before the Hon'ble Income Tax Appellate Tribunal to,

- a) reverse the order of Hon'ble CIT(A) denying the benefit of higher depreciation on windmill installed prior to 01.04.2012.*
- b) give directions to the learned Assessing Officer to allow the depreciation on such windmill at the rate of 80%, and;*
- c) pass such other consequential order as the Hon'ble Income tax Appellate Tribunal may deem fit to render justice."*

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing power and energy filed its return of income for the assessment year 2015-16 on 28.09.2015 declaring loss of ₹ 4,53,11,195/- under the normal provisions and book profit of ₹ 1,56,45,624/- u/s.115JB of the Income Tax Act, 1961. During the year under consideration, the assessee has purchased used windmills installed on or before 31.03.2012 and claimed depreciation @ 80%, as per pre-amended Appendix-I. During the course of assessment proceedings, the Assessing Officer was of the opinion that depreciation on windmills purchased and installed on or after

01.04.2012 are eligible for depreciation @ 15% but not 80% as claimed by the assessee, accordingly, rejected excess depreciation claimed amounting to ₹ 4,41,26,837/- and added back to the total income. The relevant findings of the Assessing Officer are asunder:-

"4. Excess depreciation claimed on wind mills:-

On verification of the details, it is observed that depreciation on used wind mills purchased during the F.Y.2013-14 has been claimed at 80%. However, in view of Income-tax (Fourth Amendment) Rules, 2012 - Amendment in the Table of the New Appendix-I dated 30/03/2012, depreciation on wind mills installed after 01/04/2012 are eligible to depreciation @ 15% only. The assessee's contention is that the second hand wind mill purchased during F.Y.2013-14, has been already installed and as such its claim of 80% is in order.

4.1 However, the intention of the legislation is that wind mills purchased after 31/03/2012 are eligible for 15% depreciation only. It does not distinguish between new purchase vis-à-vis second hand purchase i.e pre installed wind mills)

4.2 The assessee contended that the asset during the relevant period does not fall within the 15% Block of Plant & Machinery as it has purchased pre installed WTGs during F.Y.2013-14. However as per the provisions of the Act, there cannot be 80% block in respect of wind mills purchased during F.Y.2013-14, except those already existing in the books. As per the amendment in this regard, no fresh 80% block can be created just because the wind mills are 'second-hand and pre-installed. So for the assessee, during the material year F.Y.2013-14, a fresh block @ 15% comes into existence, As such in the instant case, it is a new. block coming into existence.

4.3. Further the assessee's contention is that only newly installed WTGs are covered by the notification is not tenable

because the intent of the legislature vide the said Notification is amply clear, The subsequent reversal of depreciation to 80% vide amendment wef. 01/04/2014 is of no consequence to this year under consideration because the relevant notifications are amendatory not clarificatory.

4.4 *Also the assessee's interpretation that second hand purchase (i.e) pre installed with mills are not covered by the Notification is not in consonance with the rules regarding interpretation of statutes. By this interpretation, discrimination will be created between class of assesses, which is not the intention of any legislative enactment. i.e. assessees who have purchased pre-installed wind mills during the material year, will be eligible for 80% and those who purchase new Wind mills are eligible for lesser rate @ 15%. In fact, the second hand windmills are purchased at enhanced cost, though W.D.V. for the previous owner is far less figure due to accelerated depreciation. So, giving depreciation on such wind mills @ 80% because it is pre-installed is not in consonance with the legislative intent and there will be discrimination between same class of assessees' i.e. assessees who have newly purchased and installed WTGs and assesses who have purchased second hand WTGs(not requiring installation as it is pre installed), In fact the legislative purpose will not be served by the latter category who continue to benefit from accelerated depreciation on those assets whose WDV before the sale would be much less if depreciation is given at 80% even after the notification.*

5. *"As approved by the Supreme Court, 'the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view,, Even the Courts have declined to bound by the letter, when it frustrates the patent purposes of the statute'. It is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature'.*

5.1 *No exception can be taken to the proposition that fiscal statutes should be interpreted strictly and in cases of doubt, the benefit of construction must be given in favour of the assessee.*

However this rule applies only to charging sections and not to machinery sections or to provisions which give relief to the tax payer. In Gursahai Saigal v. CIT [1963] 48 ITR (SC) , it has been held that the rule of strict construction applies primarily to charging provision in a taxing statute and has no application to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its collection and such machinery provisions have to be construed by the ordinary rules of construction. One important consideration in construing a machinery section is that it should be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable.

5.3 *In light of the above, depreciation at enhanced rate @80% on wind mills because it is 'Pre-installed is not in consonance with the legislative intent vis-à-vis amendatory notification. Accordingly for this A.Y.2015-16, the WDV. as on 31.03.2015 is reworked by adopting 15% depreciation for windmills.*

Reworking of depreciation as per IT Act on Wind Mills:

Rate of depreciation	80% -Block - As per assessee's claim			15% -Block - Actual allowable as per amendment		
Purchase in F.Y.13-14	More than 180 days	Less than 180 days	Total	More than 180 days	Less than 180 days	Total
	127457108	113539000	240996108	127457108	113539000	240996108
Depreciation for F.Y.13-14	101965686	45415600	147381286	19118566	8515425	27633991
W.D.V. as on 01/04/2014	9,36,14,822			21,33,62,117		
Additions during F.Y.14-15(less than 180 days)	38,13,224			38,13,224		
Depreciation for F.Y.2014-15	7,64,17,147			3,22,90,310		
W.D.V. as on 01/04/2015	2,10,10,899			18,48,85,031		

6. *After re-computation for AY.2014-15 , the eligible depreciation (on all assets) for AY.2015-16 is found to be in excess - (₹ 769,30,161/- - Rs. 3,28,03,324/-) by ₹ 4,41,26,837/- . This has to be disallowed for A.Y.2015-16.*

7. The assessee has claimed depreciation at 80% as against 15% which is in the nature of furnishing inaccurate particulars of income, in view of the notification which clearly states that the WTGs during the material year are eligible for depreciation at 15%. As such penalty proceeding u/s.271(1)(c) is initiated separately.”

4. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee has submitted that windmill purchased and installed on or before 31.3.2012 are eligible for 80% depreciation as per Notification No.15/2012 dated 30th March, 2012, where the CBDT has clarified that windmills and any specially designed devices which run on windmill installed on or before 31.3.2012 are eligible for 80% depreciation. The learned CIT(A), after considering relevant submissions of the assessee rejected the claim by holding that one of the basic conditions for claim of depreciation on any asset is its ownership. Since the assessee became owner of the asset only after 31.3.2012, whether or not the asset is a new asset or used asset, depreciation should be provided as per rate applicable from the date the assessee became owner of the asset. Since the assessee purchased asset on or after 01.04.2012, as per

amended provisions windmills are entitled for depreciation @ 15%. Therefore, conclusion drawn by the Assessing Officer that the assessee has made wrong claim of depreciation is correct and her decision to rework the same adopting 15% depreciation on windmill is in accordance with law and accordingly, rejected the claim of the assessee and confirmed disallowance of depreciation. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned AR for the assessee submitted that the learned CIT(A) has erred in concluding that second hand windmill installed prior to 01.04.2012, but purchased by the assessee during the financial year 2013-14 are eligible for only 15% depreciation without appreciating the fact that the word used in Appendix-I is installation of windmills, but not acquisition and installation. The AR further submitted that the learned CIT(A) failed to appreciate that law does not distinguish between first and subsequent owner for allowing depreciation and what is relevant is whether asset is installed on or before the specified date. If an asset is installed on or before the specified date, then rate applicable for period when

asset was installed should be allowed irrespective of the fact that asset is transferred to another person. In this case, the assessee has purchased windmills which were purchased and installed before 31.3.2012 hence, eligible for 80% depreciation which is supported by notification issued by CBDT vide Notification No.15/2012 dated 30.03.2012.

6. The learned DR, on the other hand, supporting the order of the learned CIT(A), submitted that as per amended provisions of Appendix-I Part 'A', rate of depreciation has been changed from 80% to 15% on windmills acquired and installed after 01.04.2012. Since the assessee has acquired windmills in the financial year 2013-14, rate of depreciation applicable to that period was 15% and hence, there is no error in the findings of the Assessing Officer to restrict the depreciation to 15% instead of 80% claimed by the assessee.

7. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The rates for claiming depreciation under the Income Tax Act for various block of assets is specified under Rule 5 of Income Tax Rules,1962, read with New Appendix-I of the

Rules. As per said New Appendix-I, rate of depreciation for windmill are specifically given in Part A, as per which windmills and any specially designed devices which run on windmills are eligible for depreciation @ 80%. This was further clarified by CBDT vide its Notification No.15/2012 dated 30.03.2012, as per which, windmills installed on or before 31.03.2012 are eligible for 80% depreciation. The Assessing Officer has disallowed depreciation claimed by the assessee on the ground that windmills purchased and installed on or after 01.04.2012 are eligible for 15% depreciation, as per amended Appendix-I of Rule 5 of Income Tax Rules,1962. According to her, ownership is essential for claiming depreciation on any asset and hence, if the assessee became owner after 01.04.2012, irrespective of the fact that any asset is installed on or before 31.03.2012, depreciation shall be applicable as per amended provisions of the Act. Therefore, she opined that rate of depreciation applied by the assessee on windmills is incorrect and hence, disallowed excess depreciation over and above 15% claimed on windmills.

8. We have given our thoughtful consideration to the reasons given by the Assessing Officer for disallowance of depreciation over and above 15% on windmills and find no merits, because the Act specifically states that windmills installed on or before 31.03.2012 are eligible for depreciation @ 80%. The said rule does not give emphasize for purchase/acquisition of windmills, but only talks about installation. When the Act itself talks about installation of windmill, then acquisition of such asset is not material to decide rate of depreciation. In this case, there is no dispute with regard to the fact that windmills were installed on or before 31.03.2012. It is an admitted fact that the assessee has purchased used windmills on 'as is where is' basis for the financial year 2013-14. Therefore, once the windmills are installed before 31.03.2012, then rate of depreciation is applicable as per pre-amended Appendix-I of Rule 5 of Income Tax Rules,1962. Further, as per said rule, rate of depreciation on windmills which are acquired and installed on or before 31.03.2012 is at 80%. Therefore, we are of the considered view that the Assessing Officer as well as learned CIT(A) erred in coming to the conclusion that assessee became owner of

windmills only after 31.03.2012 and entitled for depreciation as per amended rate, when the law is very clear about installation of windmills and acquisition of asset is immaterial to claim depreciation. In this case, since the windmill was acquired and installed on or before 31.03.2012 and assessee has became second owner and has not dismantled from one place and re-erected in another place, the interpretation given by the Assessing Officer and learned CIT(A) are contrary to the provisions of Rule 5 of Income Tax Rules,1962. Hence, we set aside the order of the learned CIT(A) and direct the Assessing Officer to allow depreciation @ 80% on windmills as claimed by the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28th April, 2021

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 28th April, 2021

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखासदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------|-------------------------|------------------------------|
| 1. Appellant | 2. Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |