

आयकर अपीलिय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लक्षा सदस्य कासमक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5227/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-5(2)(2) 5 th Floor, 571, Aaykar Bhawan M.K.Road, Mumbai – 400 020	बनाम/ Vs.	M/s Morries Energy Limited 11-A, Embassy Apartments 46, Nepean Sea Road, Mumbai-36
PAN No. : AABCG-4831-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Poonam Agnihotri – Ld. AR
Revenue by	:	Shri Rajendra Joshi– Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	25/05/2021
घोषणा की तारीख / Date of Pronouncement	:	01/06/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment year [AY in short] 2012-13 contest the order of Ld. Commissioner of Income Tax (Appeals)-10, Mumbai [in short CIT(A)] dated 31/05/2019 which has invalidated the reassessment proceedings as initiated by Ld. AO for the year under consideration.
2. After hearing rival arguments, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident corporate assessee stated to be engaged in power generation, real estate, securities etc. was subjected to reassessment proceedings for the year under consideration and an assessment was framed u/s 143(3) r.w.s. 147 on 15/12/2017. The return of income was already scrutinized u/s 143(3) vide order dated 28/03/2015. However, the case was reopened vide notice u/s 148 dated 31/03/2017. The reason to trigger reassessment was that the assessee claimed depreciation of 100% on windmill having capacity of 1.25 mw which was so eligible only if the windmill was put to use for more than 180 days during the relevant previous year. Since the windmill was put to use for less than 180 days, the assessee was not eligible to claim the depreciation and accordingly, there was excess depreciation claim for Rs.125.69 Lacs.

3.2 The assessee while opposing the reassessment proceedings, submitted that the windmill was out to use for more than 180 days and the claim was rightly made and allowed. This aspect was already examined by Ld. AO during scrutiny assessment proceedings u/s 143(3) and the claim was allowed with due application of mind. However, rejecting the same and after appreciating assessee's documentary evidences, Ld.AO opined that the assessee was entitled to 50% rate of depreciation only on these assets. Accordingly, the assessed loss was reduced with the alleged excess claim.

4. Before Ld. CIT(A), the assessee assailed reassessment proceedings by submitting that requisite details as well as documentary evidences etc. with respect to depreciation claim were duly submitted during the course of original assessment proceedings u/s 143(3). The same were duly verified and accepted by Ld. AO with due application of

mind. Further, there was no new evidence on record which would prove that income escaped assessment. Reliance was placed, inter-alia, on the decision of Hon'ble Apex Court in **Kelvinator of India Ltd. (2010; 320 ITR 561)** for the submissions that in the absence of any new tangible material, the case could not be reopened on mere change of opinion.

5. The Ld. CIT(A) appreciated the details & evidences furnished by the assessee with respect to depreciation claim during original assessment proceedings u/s 143(3). The same has already been enumerated in para 6.3.3 of the impugned order. After considering these submissions, Ld. CIT(A) concurred that the claim was duly verified during original assessment proceedings. Further, Ld. AO was not in possession of any new material to conclude that the income had escaped assessment. The whole basis of formation of belief was only existing record as available with Ld. AO. Therefore, the ratio of cited decision was squarely applicable to the facts of the case. During original assessment proceedings, Ld. AO had verified all the necessary details regarding claim of depreciation and applied his mind on the issue. Therefore, reopening of assessment on mere change of opinion could not be held to be justified. Accordingly, the reopening was held to be invalid. Consequently, consideration of issue on merits, was held to be infructuous. Aggrieved, the revenue is in further appeal before us.

6. Upon careful consideration of the impugned order, it is quite evident that the original return of income stood scrutinized u/s 143(3) wherein assessee's claim of depreciation was duly examined by Ld. AO. The claim was allowed after due application of mind. The requisite documents and details were already furnished by the assessee during original assessment proceedings. However, subsequently, on the basis

of existing material as available on record, Ld. AO formed an opinion of escapement of income which was nothing but mere change of opinion. There was no new tangible material which would demonstrate any escapement of income in the hands of the assessee. This being so, the ratio of cited decision was squarely applicable to the facts of the case and Ld. CIT(A) was quite justified in declaring the reassessment proceedings as invalid. Finding no infirmity in the same, we dismiss the appeal.

7. The appeal stands dismissed.

Order pronounced on 01st June, 2021

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/06/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.