

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

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास
अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.2613/Mds/2014**
(निर्धारण वर्ष / Assessment Year : 2010 -2011)

M/s. Pandian Chemicals Ltd,
17-A, Vallabhai Road,
Chokkiklam,
Madurai 625 002.

Vs. The Deputy Commissioner of
Income Tax,
Company Circle –I,
Madurai.

[PAN :AABCP 6618D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. S. Chandrasekaran, C.A.,
प्रत्यर्थी की ओर से / Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 22.01.2015.
घोषणा की तारीख /Date of Pronouncement : 27.01.2015.

आदेश / O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER

The appeal has been filed by the assessee against the order of
Commissioner of Income Tax (Appeals)-II, Madurai dated 18.08.2014.

2. The assessee is a public limited company engaged in the
business of manufacturing chlorate and generation of power through

wind mill. The assessee filed its return of income for the assessment year 2010-11 on 27.09.2010 admitting income of ₹.2,58,83,550/-. Thereafter, the assessee filed revised return on 12.10.2010 declaring income of ₹.2,44,57,950/-. The case of assessee was selected for scrutiny and notice u/s. 143(2) was issued on 30.08.2011. During the course of scrutiny assessment, the Assessing Officer observed that the assessee had claimed expenditure under the head "repairs and maintenance" to the tune of ₹.92,00,000/- for replacing old wind mill with the new one. The Assessing Officer held that the expenditure is capital in nature.

Aggrieved by the addition/disallowance made by the Assessing Officer vide order dated 28.03.2013, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order upheld the findings of Assessing Officer. Now, the assessee has come in second appeal against the findings of the Commissioner of Income Tax (Appeals).

3. Shri. S. Chandrasekaran appearing on behalf of the assessee submitted that the learned Commissioner of Income Tax (Appeals) erred in coming to the conclusion that the assessee had replaced existing windmill with the new windmill. One of the windmill installed by the assessee suffered huge damage caused by natural calamities.

The assessee has only replaced the rotor blades and part of the stem of windmill. It is not the case where the entire windmill has been replaced with the new one. The learned Authorised Representative to support his submission placed reliance on the decision of Hon'ble Supreme Court of India in the case of Saravana Spinning Mills (P) Ltd reported as 293 ITR 201 and the decision of Hon'ble Allahabad High Court in the case of CIT vs. V. Renu Sugar Power Co. Ltd reported as 298 ITR 94.

4. On the other hand, Shri. A.V. Sreekanth representing the Department supported the order of Commissioner of Income Tax (Appeals). The learned Departmental Representative pointed out that in the grounds of appeal raised before the Commissioner of Income Tax (Appeals), the assessee had admitted the fact that the wind mill of similar capacity was purchased and installed in place of totally damaged wind mill. The learned Departmental Representative further submitted that it is nowhere stated by assessee that only certain parts of the windmill which were damaged were replaced.

5. We have heard the submissions made by the representatives of both sides and perused the orders of the authorities below. We have also examined the decision on which the learned Authorised Representative of the assessee has placed reliance. The contention of

the learned Authorised Representative before us is that only damaged parts of windmill were replaced and not the whole windmill has been replaced with the new one.

6. We find that the authorities below have denied the relief claimed by the assessee on the ground that the assessee has replaced old windmill with the new one. As pointed out by the Departmental Representative, in the grounds of appeal before the Commissioner of Income Tax (Appeals), the assessee has made following submissions.

“In your appellant’s HTSC No.2 there were two wind mills each of 250 KW capacity. The 500KW wind mills used to generate power for supply to the grid. In the above HTSC one No.250 KW wind turbine (TCL2) was totally damaged due to natural calamity. Hence a similar capacity windmill was purchased and installed in the place of the totally damaged wind mill.....”

It is not clear from the records before us whether the assessee has replaced only damaged parts of the existing windmill or has replaced entire old wind mill with the new one. These facts have to be ascertained from books, purchase order, job sheet etc. In case, the assessee has replaced only damaged parts of the windmill, without there being substantial change in original performance and generation capacity of wind mill the expenditure is allowable as claimed by the assessee. We find that the judgment of the Hon’ble Allahabad High Court in case of Rena Sugar Power Company Limited(supra) also supports the contentions of the learned Authorised Representative.

Needless to say that if it is case of replacing new wind mill in the place of old wind mill, the expenditure would certainly be capital in nature. The file is remitted back to the Assessing Officer with a direction to decide the issue afresh after verifying the factual aspect. The Assessing Officer while deciding the issue de-novo shall grant an opportunity of hearing to the assessee, in accordance with law.

7. The second issue in appeal with respect to treatment of insurance claim is not pressed by the Id. Authorised Representative of the assessee. The same is dismissed as not pressed.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on Tuesday, the 27th of January, 2015, at
Chennai.

Sd/-

Sd/-

(बी.आर. बास्करन)

(B.R. BASKARAN)

लेखा सदस्य/ ACCOUNTANT MEMBER

(विकास अवस्थी)

(VIKAS AWASTHY)

न्यायिक सदस्य /JUDICIAL MEMBER

दिनांक/Dated:27.01.2015.

K.V

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.

