

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES , JAIPUR

श्री भागचन्द्र, लेखा सदस्य एव श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 762/JP/2016
निर्धारण वर्ष/Assessment Year : 2010-11

The ACIT Circle- 6 Jaipur	बनाम Vs.	M/s. Venkateswara Wires (P) Ltd. 302, Navjeevan Chambers Vinoba Marg, C Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACV 5085 F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से / Revenue by: Shri R.A. Verma, Addl. CIT-. DR
निर्धारिती की ओर से / Assessee by: Shri S.L. Poddar, Advocate

सुनवाई की तारीख / Date of Hearing : 22/02/2017
घोषणा की तारीख / Date of Pronouncement : 22 /02/2017

आदेश / ORDER

PER BHAGCHAND, AM

The Revenue has filed an appeal against the order of the Id.
CIT(A)-5, Jaipur dated 13-06-2016 for the assessment year 2010-11
raising therein following grounds of appeal.

1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in deleting the addition of Rs. 45,39,528/- made by AO on account of excess depreciation claimed by assessee on windmill projects.

2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in treating the civil construction (building) 7 plant & machinery related

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to windmill project as a part of windmill project and accordingly eligible for depreciation @ 80% as claimed by assessee.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in deleting addition of Rs. 16,785/- made for depositing the employee's contribution to PF beyond the prescribed time limit provide in the respective Act.

4. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in holding that employee's contribution to PF is governed by the provisions of Section 43B and not by Section 36(10)(va) r.w.s. 2(24)(x) of the I.T. Act.”

2.1 Apropos Ground No. 1 and 2 of the Revenue, the facts as emerges from the order of the Id. CIT(A) is as under:-

“2.3 I have considered the facts of the case, the assessment order and the submissions of the appellant. The issue as to whether the civil constructions parts and plant & machinery are different units and separate from the windmill and hence eligible for lesser rate of depreciation, came up for decision in the case of the assessee before Id. CIT(A)-II, Jaipur in appeal No. 332/10-11 dated 23-07-2013 and was decided as follows.

“I have considered the facts of the case the assessment order and the submissions of the case. Assessing Officer restricted the depreciation on civil construction work in windmill from 80% to 10%. Appellant submitted that civil construction work is part of wind mill for which composite rate of depreciation is 80%. Appellant also relied upon the decision of Tribunal and also of Jurisdictional High Court. I have gone through these decisions. The decision of jurisdictional Tribunal in the case of Vijay Industries vs. ACIT ITA No. 745/JP/2007 dated 18-07-

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2008 wherein ITAT categorically held that the cost of civil work has to be added to the cost of windmill and is thus eligible for the depreciation @ 100%. Since facts of the appellant are identical, this issue is covered in favour of the appellant. Accordingly, Assessing Officer is directed to allow depreciation on civil construction work at the rate applicable to wind mill. If any effect of reduced depreciation is already given in future years, AO is directed to withdraw the same.’’

2.4 Following the above decision, it is held that the civil construction part as well as plant & machinery are integral part of wind mill and are hence eligible for depreciation at the rate of 80% as applicable to wind mill. The addition of Rs. 45,39,528/- on account of disallowance of depreciation is therefore, deleted.’’

2.2 During the course of hearing, the ld. DR relied on the order AO.

2.3 On the other hand, the ld. AR of assessee supported the order of the ld. CIT(A).

2.4 We have heard the rival contentions and perused the materials available on record. It is noted that such issue has already been decided by the Coordinate Bench vide order dated 18-07-2008 in the case of M/s. Vijay Industries vs. ITO, Alwar in ITA No. 745/JP/2007 for the assessment year 2003-04 wherein the Bench had allowed 80% depreciation on the issue in question by observing as under:-

“6. We have heard the rival contentions and perused the facts of the case. The Provisions of allowing depreciation on the wind mill is governed by appendix I para (xiii) (1) which reads as under:-

“(xiii) Renewable energy devices being
 (a) to (k)

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(1) Wind mills and any specially designed devices
which run on wind mills 80%”

It is evident from the aforementioned Provisions that the depreciation @ 80% has to be charged on the complete wind mill. Therefore, the Id. CIT(A) is not justified in segregating the cost of the construction of the room from the said wind mill. The said construction of the room , as argued has been specially designed for the purpose of the wind mill and therefore, the Id. CIT(A) is directed to allow the depreciation as per the rules applicable on the wind mills. Thus Ground No. 6 of the assessee is allowed”

Respectfully following the decision of the Coordinate Bench (supra), we find no reason to interfere with the order of the Id. CIT(A). Thus Ground No. 1 and 2 raised by the Revenue are dismissed.

3.1 Apropos Ground No. 3 and 4 of the Revenue, the facts as emerges from the order of the Id. CIT(A) is as under:-

“5.3 I have considered the facts of the case, the assessment order and the submissions of the appellant. Employee’s PF of Rs. 16,785/-has admittedly been deposited before the due date u/s 139(1) and is therefore, allowable in view of decisions of Jurisdictional High Court including that in the case of CIT vs. JVVNL 98 DTR 105 (Raj.).The disallowance of Rs. 16,875/- is accordingly deleted.”

3.2 During the course of hearing, the Id. DR relied on the order AO.

3.3 On the other hand, the Id. AR of assessee supported the order of the Id. CIT(A).

3.4 We have heard the rival contentions and perused the materials available on record. In this case, the AO noticed during assessment proceedings that the assessee had failed to deposit EPF amounting to Rs.

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16,785/- on or before the prescribed due dates. Hence, the AO in terms of Section 36(1)(va) read with Section 2(24)(x) of the I.T. Act disallowed the amount of Rs. 16,785/- and added the same to the total income of the assessee which has been deleted by the Id. CIT(A) in first appeal. The Revenue in appeal before us prayed that the Id. CIT(A) has erred in deleting the amount of Rs. 16,765/- disallowed by the AO. We find that such issue has already been decided in favour of the assessee by the ITAT Jaipur Bench in the case of ITO vs. M/s. S. Brothers Facilities Management in ITA No. 957/JP/2016 for the assessment year 2013-14 vide order dated 5 /01/2017 by observing as under:-

“2.5 I have heard the rival contentions and perused the materials available on record. I have gone through the order of the Id. CIT(A) and the case laws submitted before the Id. CIT(A) which finds favour of the assessee. It may further be noted that such issue has also been decided by the ITAT, Coordinate Bench, Jaipur in favour of the assessee vide its order dated 27-09-2016 in the case of ACIT vs. Shri Shailendra Garg, C/o M/s. Garment Craft India (P) Ltd. (ITA No. 804/JP/2015 for the assessment year 2010-11). It may be further noted that the Hon'ble Hon'ble Jurisdictional High Court in the case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. (2014) 265 CTR 59 had considered this issue in detail at para 7 to 9 of its order as under:-

“7. Further, the hon'ble Supreme Court in *CIT v. Vinay Cement Ltd.* [2009] [313 ITR \(St.\) 1](#) (SC) while dismissing the special leave petition preferred by the Revenue against the judgment of the Gauhati High Court observed as under :

“In the present case, we are concerned with the law as it stood prior to the amendment of section 43B. In the

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circumstances the assessee was entitled to claim the benefit in section 43B for that period particularly in view of the fact that he has contributed to provident fund before filing of the return."

8. *Following the observations of the hon'ble Supreme Court in Vinay Cement (supra), the Delhi High Court in CIT v. AIMIL Ltd. [2010] [321 ITR 508](#) (Delhi) held at page 518 as under :*

"We may only add that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Funds Act as well as the Employees' State Insurance Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income-tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in Vinay Cement [2009] [313 ITR \(St.\) 1](#) (SC)."

9. *In view of the settled legal position, the appeal preferred by the Revenue has no substance and the same is, therefore, dismissed. No costs. "*

In view of the above facts, circumstances of the case and the decisions mentioned above, I find no reason to interfere with the order of the Id. CIT(A). Thus the appeal of the Revenue is dismissed. "

In view of the above deliberations and respectfully following the order of Hon'ble Jurisdictional High Court in the case of CIT vs. JVVNL 98 DTR 105 (supra) and also the order of ITAT Jaipur Bench (supra), we find no

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reason to interfere with the order of the Id. CIT(A) on the issue in
question. Thus Ground No. 3 and 4 of the Revenue are dismissed.

4.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22 /02/2017

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर /Jaipur

दिनांक /Dated:- 22/02/ 2017

*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- The ACIT, Circle- 6, Jaipur
2. प्रत्यर्थी / The Respondent- M/s. Venkateswara Wires (P) Ltd. , Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.762/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar