

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH "A", BANGALORE**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SMT. ASHA VIJAYRAGHAVAN, JUDICIAL MEMBER**

**ITA Nos. 1154 to 1156/B/2014
Assessment Years : 2006 – 07 to 2008 – 09**

The ACIT, Circle – 1, Devangere	Vs	M/s BS. Channabasappa & Sons, Kalika Devi Road, Devangere PAN AADFB0361L
(Appellant)		(Respondent)

And

**ITA No. 1157 to 1159/B/2014
Assessment Year 2006 – 07 to 2008 – 09**

The ACIT, Circle – 1, Devangere	Vs	M/s BSC Textiles, Kalika Devi Road, Devangere PAN AAEFB9263A
(Appellant)		(Respondent)

Assessee by	Shri V. Srinivasan, Advocate
Revenue by	Dr. P. K. Srihari, Addl. CIT
Date of hearing	18/07/2016
Date of pronouncement	20/07/2016

ORDER

PER A. K. GARODIA, AM.

All these six appeals are filed by two different but connected assesses for A. Ys. 2006 – 07 to 2008 – 09 and a common issue is involved in these appeals. Therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

The only issue involved in these appeals is regarding computation of deduction allowable to the assessee u/s 80IA after invoking the provisions of sub section (5) of section 80IA. The case of the A.O. is this that in the first year when the wind mills were put into use, 100% depreciation is allowable and therefore, as per section 80IA (5), even if such depreciation is adjusted in the preceding years against other incomes, unabsorbed depreciation of wind mill units has to be reduced from the income of the wind mill units in the relevant year to the extent it was not set off against the profit of the eligible unit and when this is done, there is no profit in the eligible unit and therefore, no deduction is allowable u/s 80IA.

2. Deduction was allowed by CIT (A) by following the tribunal order rendered in the case of Swarn giri Wire Insulation Pvt. Ltd. vs. ITO in ITA No. 200/Bng/2010 dated 21.05.2010. Now the revenue is in appeal.

3. Learned DR of the revenue supported the assessment order whereas learned AR of the assessee supported the order of CIT (A). He also submitted that this issue is now covered in favour of the assessee by the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Shri Anil H. Lad in ITA No. 176 of 2011 Dated 05.02.2014. He submitted a copy of this judgment and pointed out that in this case, it is noted by Hon'ble Karnataka High Court that this issue is covered in favour of the assessee by the judgment of Hon'ble Madras High Court rendered in the case of Velayudhaswamy Spinning Mills (P) Ltd. vs. ACIT as reported in 38 DTR 57.

4. In the rejoinder, it was submitted by the learned DR of the revenue that even as per this judgment of Hon'ble Karnataka High Court rendered in the case of CIT

vs. Shri Anil H. Lad (Supra), the losses of the eligible unit for the years beginning from the initial assessment year has to be brought forward and the losses of earlier years prior to initial assessment year which were already set off against other income of the assessee cannot be brought forward and set off against the income of the eligible business and these facts are to be examined as to which year is the initial assessment year and whether the loss of eligible business in an earlier year was actually set off against the income of non eligible business and then only it can be held that no B/F loss of the eligible business is to be set off in the present three years. He submitted that therefore, the matter may be restored back to CIT (A) for a fresh decision in the light of this judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Shri Anil H. Lad (Supra).

5. We have considered the rival submissions. The ratio of the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Shri Anil H. Lad (Supra) is this that when the assessee exercises the option, only losses of the years beginning from that initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against income of the assessee is to be brought forward. Hence it has to be seen as to in which year, the assessee in the present case exercised its option in the present two cases and accordingly, which year is the initial assessment year in these two cases. This fact is not available on record. Thereafter, it is also to be seen that if the initial assessment year is not the first year in which the wind mills were put to use then whether other incomes of the assessee was sufficient during the years prior to the initial assessment year to absorb the loss of the wind mill units because then only it can be said that the loss of eligible business of the period prior to initial assessment year was actually set off and therefore, no loss of such prior period is to be set off

against income of the wind mill units in the initial assessment year or in a subsequent year. These facts are also not available on record. Therefore, we feel it proper to restore this matter back to CIT (A). Accordingly, we set aside the orders of CIT (A) in both cases in all three assessment years and restore the matter back to his file for a fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides.

In the result, all these six appeals of the revenue are allowed for statistical purposes.

(Order was pronounced in the open court on the date mentioned on the caption page)

(ASHA VIJAYRAGHAVAN)
Judicial Member

(A.K. GARODIA)
Accountant Member

Dated: /07/2016

Place: Bangalore

am*

Copy :

To

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Bangalore

Asstt. Registrar,
ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4	Date on which the order is placed before the dictating Member for pronouncement
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