

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1000 & 1001/Mds/2016

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

The Joint Commissioner of  
Income Tax,  
Corporate Circle – 1(2),  
Chennai - 600 034.

v. M/s Chennai City Centre Holdings  
Pvt. Ltd.,  
No.10-11, Dr. Radhakrishnan Salai  
Mylapore, Chennai - 600 004.

(अपीलार्थी/Appellant)

PAN : AAACG 3869 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Dr. Anita Sumanth, Advocate  
Shri Vijay Kumar Punna, Advocate

सुनवाई की तारीख/Date of Hearing : 02.08.2016

घोषणा की तारीख/Date of Pronouncement : 23.09.2016

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Chennai, dated 28.01.2016 and pertain to assessment years 2010-11 and 2011-12. Since common issues arise for consideration in

both the appeals, we heard these appeals together and disposing of the same by this common order.

2. The first issue arises for consideration is with regard to depreciation claimed by the assessee on windmill.

3. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee claimed depreciation on the civil work made for installation of windmill, at the rate of 80%. According to the Ld. D.R., the civil work is totally different from windmill, therefore, the assessee cannot claim depreciation at the rate of 80% on the civil work carried out for installation of windmill. Referring to the assessment order, more particularly para 7.4, the Ld. D.R. submitted that the civil construction cannot be construed as part and parcel of windmill. Therefore, the assessee is not eligible for depreciation at the rate of 80%. At the best, the civil construction can be construed as ordinary building used for business and entitled for depreciation at the rate of 10%. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. On the contrary, Dr. Anita Sumanth, the Ld.counsel for the assessee submitted that the assessee has to necessarily erect the windmill on the civil foundation. The windmill cannot exist without any civil foundation. Therefore, it cannot be said that the civil construction made by the assessee for the purpose of installing the windmill is not part and parcel of windmill. According to the Ld. counsel, without the civil construction, the windmill cannot exist. Therefore, when the assessee constructed building for erecting the windmill, according to the Ld. counsel, the building constructed by the assessee for the purpose of windmill has to be construed as part and parcel of the windmill. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly allowed the claim of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The question arises for consideration is when the assessee constructed a building for the purpose of erection of windmill, whether such a building would form part of windmill? This Tribunal is of the considered opinion that the windmill cannot exist without a civil foundation. Therefore, the civil work / building constructed by the assessee for

the purpose of installation of windmill has to be necessarily construed as part of windmill. In other words, the windmill cannot exist without civil construction. Therefore, the civil construction as well as the windmill has to be construed as single unit for the purpose of depreciation. Accordingly, the assessee is eligible for depreciation at the rate of 80%. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. The next ground of appeal is with regard to depreciation on DG sets, HVAC, etc. to the extent of ₹1,90,37,191/-.

7. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee-company let out a shopping mall and earned lease rentals, which was offered under the head "income from house property". After claiming deduction under Section 24 of the Income-tax Act, 1961 (in short 'the Act'), the assessee disclosed a loss of ₹13,43,88,740/- under the head "business". The assessee is also claiming depreciation on plant and machinery, DG sets, HVAC and others. The Ld. D.R. pointed out that when the assessee has classified the income from letting out the shopping mall under the head "income from property", depreciation cannot be

allowed. The assessee cannot take a benefit of 30% deduction under Section 24 of the Act and also depreciation under Section 32 of the Act. Section 32 of the Act, according to the Ld. D.R., is available only when the income was computed under the head "income from business". Since the assessee itself declared the income under the head "income from house property", there cannot be any claim of depreciation.

8. On the contrary, Dr. Anita Sumanth, the Ld.counsel for the assessee submitted that the assessee is admittedly letting out the shopping mall and also maintaining the shopping mall. The assessee is claiming depreciation only on DG sets, HVAC and other depreciable items, which are put to use for serving the common area of the shopping mall. No doubt, according to the Ld. counsel, the assessee is letting out the shopping mall and disclosed the income as "income from house property" under Section 24 of the Act. With regard to other activities and facilities specifically provided to the lessee, the assessee accounted the profit as business income. The other activities and facilities include maintenance of building, provision for security, advertisement boards and hoardings, windmill, maintenance of parking area,

providing uninterrupted electricity, etc. The income from these activities is classified as business income. According to the Ld. counsel, the assessee is not claiming depreciation on the building of the shopping mall. Depreciation was claimed only in respect of the plant and machinery used for providing facilities in the common area. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly allowed the claim of the assessee.

9. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee is letting out shopping mall and maintaining the shopping mall. The assessee disclosed the income from letting out the shopping mall as “income from house property” under Section 24 of the Act. Apart from letting out the property, the assessee also claims that it provided facilities such as maintenance, security, advertisement boards and hoardings, uninterrupted power supply through windmill and DG sets, letting out professional, parking area, etc. In respect of the plant and machinery used for providing these activities / facilities, the assessee claims that the same are business in nature and declared the income out of such activities as business income. The assessee is claiming depreciation only in respect of

those plant and machinery used for providing facilities to the lessee. When the assessee has not claimed depreciation in respect of the building and claims depreciation only in respect of plant and machinery used for providing common facilities, this Tribunal is of the considered opinion that the assessee is entitled for depreciation under Section 32 of the Act in respect of plant and machinery which is used for business of the assessee for providing facilities in the common area to the lessee. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

10. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 23<sup>rd</sup> September, 2016 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai-34
4. Principal CIT-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.