

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI [CAMP @ COIMBATORE]

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 No. 2447/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 1,
Coimbatore.

v. M/s. Maple Renewable Power (P)
Ltd.,
484, Kamaraj Road,
Coimbatore

(अपीलार्थी/Appellant)

PAN : AAHCM3979N
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri Pathlaveth Peerya, CIT
: Shri T. Raghunathan, CA

सुनवाई की तारीख/Date of Hearing

: 19.01.2017

घोषणा की तारीख/Date of Pronouncement

: 28.02.2017

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 31.05.2016 and pertains to the assessment year 2012-13. The only issue arises for consideration is depreciation claimed by the assessee on the windmill.

2. Shri Pathlaveth Peerya, the Ld. Departmental Representative submitted that on verification of the material available on record, the Assessing Officer found that the assessee claimed depreciation to the extent of Rs.65,44,88,362/- on the windmill. The assessee explained before the Assessing Officer that even though the capital asset was acquired, the name was not transferred by TNEB immediately. Referring to the copy of the agreement for transfer of the windmill which is available at page No.1 of the paper book, the Ld. D.R., submitted that clause -3 of the agreement clearly says that the physical possession of the windmill shall be handed over to the assessee on 23rd December 2011 subject to full payment of lumpsum consideration of Rs.24.93 crores as stated in clause 5 of the agreement. In fact, the payment was not made by the assessee on 23.11.2011, on the date of the agreement. Unless the payment was made by the assessee, the physical possession of the windmill would not be transferred. Therefore the assessee cannot be construed as owner of the windmill for the purpose of claiming depreciation. Referring to the order of the CIT (Appeals), the Ld. D.R., submitted that the CIT (Appeals) without considering the agreement has simply placed his reliance on the decision of this Bench of this Tribunal in CIT v Tube Investments India Ltd, [2010] 131 TTJ 112 and in ACIT v Baghmar Finance Ltd., [2012] 20 taxmann.com 360 and found that

registration of the ownership by TNEB has very little consequences for grant of depreciation. According to the Ld. D.R., when the transfer of the windmill itself was disputed, the CIT (Appeals) has to find out whether the windmill was actually transferred to the assessee as per the agreement. Therefore, the CIT (Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Shri T. Raghunathan the Ld. representative for the assessee submitted that the windmill was in fact transferred on 23.12.2011 on the date on which the agreement was entered into. According to the Ld. representative, the entire windmill division was transferred as a slump sale. Referring to the financial performance and analysis which was a part of the annual report, the Ld. representative submitted that during the year under consideration, the venture company sold 3 windmills. 2 windmills situated at Anthiyur village and 1 at Mywadi Village in Udamalpet District. Referring to the judgment of the Madras High Court in Mysore Minerals Ltd v CIT [1999] 106 taxman 166, the Ld. representative submitted that when the assessee took physical possession of the windmill and exercising domain over the windmill excluding others, the assessee is entitled for depreciation even though, the same was not registered by TNEB. Therefore, the CIT (Appeals) has rightly found that the assessee took

physical possession of the property after paying the sale consideration before 31.03.2012. The revenue from electricity generation from the windmill is also recognized in the books of accounts. Therefore the CIT (Appeals) has rightly allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the material available on record. The Assessing Officer disallowed the claim of depreciation on the ground that the asset was not in the name of the assessee during the year under consideration. We have carefully gone through the order of the Assessing Officer. The assessee explained before the Assessing Officer that the windmill was acquired through slump sale. The windmill was taken possession by the company immediately. For the purpose of claiming depreciation, the asset shall be owned by the assessee either wholly or partially, and it also be used for the purpose of business and profession of the assessee. The Assessing Officer found that the assessee is not the owner of the windmill, since the same was not registered by TNEB in its name. The agreement said to have been entered clearly says that the physical possession of the windmill shall be handed over to the assessee on 23.12.2011 subject to full payment of lumpsum consideration of Rs.24.93 crores. Therefore handing over of the windmill to the assessee was subject to payment of Rs.24.93

crores. The assessee has to now establish that the windmill was handed over to the assessee physically on 23.12.2011. As rightly submitted by the Ld. D.R., what is to be seen is whether the assessee becomes the beneficial owner of the windmill in exclusion of others. If the assessee acquired the right and domain over the windmill, this Tribunal is of the considered opinion that merely because it was not registered by TNEB and transfer of name was not effected by TNEB, that cannot be a reason for disallowing the claim of the assessee. What is to be seen is whether the assessee has taken physical control of the windmill as a beneficial owner. Since, the details of payment of Rs.24.93 crores and the taking over of possession is not available on record, this Tribunal is of the considered opinion that the matter needs to be reexamined by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the entire claim of depreciation is remitted back to the file of the Assessing Officer. The Assessing Officer shall consider the matter afresh and find out whether the assessee has taken possession of the windmill on 23.12.2011 as claimed and thereafter decide the issue afresh in the light of judgment of the Apex Court in Mysore Minerals Ltd., *supra* after giving reasonable opportunity to the assessee.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 28th February, 2017 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 28th February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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