

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री एस.एस. गोदारा, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2010/Mds/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Sri Vigneswara Foundry,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode-1.

v. The Assistant Commissioner of
Income Tax,
Circle III,
Coimbatore.

PAN : AALFS 5096 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 26.02.2015

घोषणा की तारीख/Date of Pronouncement : 05.03.2015

आदेश / O R D E R

PER S.S. GODARA, JUDICIAL MEMBER:

This assessee's appeal for assessment year 2010-11 arises from order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, dated 01.07.2014 passed in Appeal

No.28/13-14 upholding the Assessing Officer's action of disallowing unexplained expenditure on ex-gratia payment of ₹ 26,31,500/- and additional depreciation of ₹ 23,23,800/-, in proceedings under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee's pleadings raise two substantive grounds of appeal. The first one pertains to disallowance of ex-gratia payment of ₹ 26,31,500/-. The assessee is fair enough at the outset to produce a copy of the 'tribunal's' order in I.T.A. No. 1672/Mds/2014 decided in its own case for preceding assessment year on the very issue. The Revenue does not dispute correctness thereof. We appreciate this fair stand and reject this ground in favour of the Revenue by following order of the co-ordinate bench.

3. The second issue that arises for our adjudication is that of additional depreciation. The assessee-firm is having income from business, rent and capital gains. It had filed its return on 07.10.2010 declaring total income of ₹ 38,94,152/-. The Assessing Officer took up 'scrutiny'. He found the assessee to

have claimed additional depreciation, i.e. 100% depreciation on the windmills. The Assessing Officer referred to Section 32(1)(iia) of the Act providing relief of initial additional depreciation (over and above normal rate) is @ 20% of the annual cost on new machinery or plant engaged in manufacturing of any article or thing in the year of acquisition or installation. He observed that the assessee was not engaged in any such manufacturing or production so as to claim additional depreciation. This resulted in the impugned disallowance of ₹ 23,23,800/-.

4. The assessee preferred an appeal. The CIT(Appeals) has affirmed the A.O.'s findings as under:-

“This ground of appeal is against the disallowance of additional depreciation claim. The appellant submitted that the assessee firm is involved in the business of manufacture or production of article or thing. Hence he is eligible for additional depreciation. On going through the facts of the case, it is evident that the assessee was not engaged in the business of manufacture or production of any article or thing. This is the 1st claim of additional depreciation on the windmill installed and the additional depreciation claimed cannot be allowed since the assessee was not involved in any manufacturing or production activity at the time of installation of the windmill. Only in the subsequent years the assessee can claim that he is engaged in manufacturing or production activity, since he will be in the business of production / generation of electricity when the present windmills were installed on which additional depreciation can be claimed.”

The assessee is not in the business of manufacturing activity to claim additional depreciation for this assessment year. Hence the Assessing Officer rightly disallowed the claim of additional depreciation. This ground of appeal is DISMISSED.”

5. We have heard both parties and perused the case file.

The assessee submits to have offered income from power generation in its Profit & Loss account of ₹ 39,737/-. The authorities below have not considered this plea in either of the order under challenge. The Revenue fails to controvert this factual position. We deem it proper to observe that whether or not the assessee has produced any power or not is a more factual issue. Therefore, in the larger interest of justice, the issue is remitted back to the file of the assessing authority for fresh decision as per law. The assessee shall be at liberty to produce all of its details in support its claim of additional depreciation.

6. The assessee's appeal is partly allowed for statistical purposes.

Order pronounced on Thursday, the 5th of March, 2015 at
Chennai.

sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)

लेखा सदस्य/Accountant Member

sd/-
(S.S. Godara)
(एस.एस. गोदारा)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5th March, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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