

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री संजय अरोड़ा, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.787, 788, 789 & 790/Mds/2017

निर्धारण वर्ष /Assessment Years: 2009-10, 2012-13, 2013-14 & 2014-15

The Asst. Commissioner of Income
Tax, Corporate Circle-4(2),
Chennai-600 034

Vs. M/s.Khivraj Automobiles &
Infrastructure Pvt. Ltd., 617,
Bharat Kumar Bhavan, Anna
Salai, Thousand Lights,
Chennai-600 006.

[PAN: AABCK 6189 L]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.B.Nischal, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.Ajith Choradia, CA

सुनवाई की तारीख/Date of Hearing

: 06.06.2017

घोषणा की तारीख /Date of Pronouncement

: 06.06.2017

आदेश / ORDER

PER BENCH:

ITA Nos.787, 788, 789 & 790/Mds/2017 are filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-8, Chennai, in ITA Nos.50/2011-12, 59/2015-16 & 106 & 274/2016-17 dated 30.01.2017 for the AYs 2009-10, 2012-13, 2013-14 & 2014-15.

2. Mr.B.Nischal, JCIT represented on behalf of the Revenue and Mr.Ajith Choradia, CA represented on behalf of the assessee.

3. It was submitted by the Ld.AR that these appeals are filed by the Revenue against the Order of the Ld.CIT(A) allowing the assessee's claim for deduction u/s.80IA(1) of the Act in respect of income from wind mills. It was a submission that the AO had disallowed the assessee's claim for deduction u/s.80IA(1) on the ground that the assessee was not the owner of the wind mills and had taken the wind mills on lease and, consequently, the assessee could only be held to be the contractor in respect of the running of the wind mills. It was a submission that the Co-ordinate Bench of this Tribunal in the assessee's own case for the AYs 2008-09, 2010-11 & 2011-12 in ITA Nos.1176, 1177 & 1178/Mds/2015 dated 03.05.2017 has held that under the provisions of Sec.80IA(4)(iv), there was no bar on the assessee to generate power by taking the assets on lease for claiming deduction u/s.80IA(1). It was a submission that Co-ordinate Bench of this Tribunal had followed the decision of the Hon'ble Jurisdictional High Court in the assessee's own case in Writ Petition No.11871/2011 dated 14.03.2012 was held in Para No.20 as held as follows:

20. I agree with the submission made by the learned counsel appearing for the petitioner that in contradistinction to sub-clause (v) to sub-section (4) of Section 80IA, there is no qualification to be read into the term "undertaking" so as to be restrictive of an assessee to be a owner along to claim the benefit under Section 80IA. Contrary to the assertion of the learned standing counsel appearing for the Revenue, I do not find anything in sub-section (3) of Section 80IA, which would go against the claim of the assessee herein that the mere fact that the assessee is a lessee, per se, does not result in any disqualification to reject the deduction claim under Section 80IA.

It was a submission that these appeals filed by the Revenue were liable to be dismissed.

4. The Ld.DR vehemently supported the order of the AO. It was a submission that the assessee was not the owner of the wind mills and consequently the assessee was not entitled to the deduction u/s.80IA(1) of the Act.

5. We have considered the rival submissions. On perusal of the orders of Co-ordinate Bench of this Tribunal for the AYs 2008-09, 2010-11 & 2011-12 in ITA Nos.1176, 1177 & 1178/Mds/2015 dated 03.05.2017, which was held as under:

From the plain reading of the sections 80-IA(4)(iv), there was no bar on the assessee to generate power by taking the assets on lease for claiming deduction u/s 80IA(4)(iv). The conditions for granting the deduction as laid down in section 80IA are (i) generation of power (ii) the unit should not formed by the splitting up of business and (iii) the unit should have been formed during period 01/04/1993 to 31/03/2017 apart from other conditions maintenance of accounts and filing of the tax audit report and filing the return of income before the due date. The assessee has satisfied all the conditions and this fact was not disputed by the Ld.DR during the appeal. Since the assets were not put use by the lessor and the assets were first put to use by the assessee for power generation we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld.

6. Further, a perusal of the Hon'ble Jurisdictional High Court in the Writ Petition No.11871/2011 dated 14.03.2012 in the assessee's own case as has been extracted above in Para No.20 shows that the assessee can claim the deduction u/s.80IA(1) even though the assessee has leased the wind mills. In these circumstances, respectfully following the decision of this Tribunal and also the decision of the Hon'ble Jurisdictional High Court

in the assessee's own case, the findings of the Ld.CIT(A) stands confirmed.

7. In the result, the appeals filed by the Revenue are **dismissed**.

Order pronounced in the Open Court on June 06, 2017, at Chennai.

Sd/-

(संजय अरोड़ा)

(SANJAY ARORA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 06, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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