

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**  
**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER AND**  
**SHRI SANJAY GARG, JUDICIAL MEMBER**

ITA No.2040/Mum./2014  
(Assessment Year : 2007-08)

SUN-N-SAND HOTELS PVT. LTD.,  
39, Juhu Beach,  
Mumbai – 400 049  
PAN – **AAACS5571P**

..... Appellant

v/s

The Dy. CIT,Cir.8(3),  
2<sup>nd</sup> Floor, Aayakar Bhavan,  
Mumbai – 400 020

..... Respondent

Assessee by : Shri Prakash K. Jotwani, A.R.  
Revenue by : Shri K.L.Kanak, D.R.

Date of Hearing – 28.09.2015

Date of Order – 28.10.2015

**ORDER**

**PER SANJAY GARG, JUDICIAL MEMBER**

The present appeal has been preferred by the assessee against the order of the CIT(A) dated 17.02.2014. The assessee has taken two effective grounds of appeal. The first ground is relating to taxability of sales tax benefit received by the assessee under the policy of the Government of Maharashtra for setting up wind mills to promote wind power generation.

2. At the outset the case of the assessee is that the sales tax

subsidy received by the assessee being incentive for setting up of wind power mills in Maharashtra has to be treated as capital in nature. Whereas, the A.O. as well as the CIT(A) held it to be a revenue receipt and accordingly taxed the same. The learned AR has submitted that the above ground taken by the assessee is identical with the question of law arising in assessee's own case for A.Y. 2003-04 presently pending before the Bombay High Court in ITXA/1063/2014. It is a matter of record that the issue of taxability of sales tax incentive received by the assessee has first arisen in relation A.Y.2003-04 and the Tribunal vide order dated 08.01.2014 in the own case of assessee for A.Y. 2003-04 to 2006-07 has decided the issue against the assessee and in favour of Revenue.

The learned AR has drawn our attention to the application moved by the assessee u/s. 158A dated 31<sup>st</sup> August 2015, wherein it has been stated that the issue involved in the present appeal is repetitive in nature and is presently pending before the Hon'ble Bombay High Court in appeal filed by the assessee against the finding of Tribunal on the same issue in the earlier assessment year.

On the application of the assessee, a report from the A.O. u/s. 158A(2) was called upon. The A.O. has sent his report dated 23.09.2015 addressed to the CIT – DR which has been further placed on record by the Id. DR with his forwarding letter dated 30.09.2015. We have perused the report of the A.O. wherein the A.O. has stated that the issue involved in assessee's appeal before the ITAT for A.Y. 2007-08 & 2008-09 is identical to the issue involved in the appeal of the assessee before the Hon'ble

High Court for A.Y. 2003-04 vide ITXA/1063/2014.

3. In view of above report of A.O. and having regard to the facts and circumstance of the case, the application of the assessee u/s.158A is accepted and the appeal of the assessee is disposed off with the observation that when the decision on the issue/question of law on this issue in the other case of the assessee for A.Y. 2003-04 becomes final, it shall be applied to the appeal of the assessee for the year under consideration and if so required, the assessee will be at liberty to move an application before the appropriate authority in this respect. The assessee shall not be entitled to further raise this question in appeal or otherwise before any higher appellate authority i.e. Hon'ble High Court or Hon'ble Supreme Court. As on today, the issue stands covered by the decision of the Tribunal in the own case of the assessee for earlier years. With the above observations this issue decided accordingly.

4. The next issue raised by the assessee is relating to disallowance under section 14A of the act. The assessment year involved in the present appeal is A.Y. 2007-08. The A.O. computed the disallowance u/s. 14A on account of expenditure incurred in relation to earning of tax exempt income as per the formula prescribed under rule 8D of the I.T. Rules. The learned CIT(A) however, relying upon the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [2010] 328 ITR 81 (Bom) observed that the rule 8D is applicable prospectively from A.Y. 2008-09 onwards and that for the assessment years the disallowance u/s 14A is to be computed on

some reasonable basis. The learned CIT(A) further observed that the assessee had not used any borrowed money for the purpose of making investments hence, no interest disallowance was warranted in this case. However, he directed to A.O. to recompute the disallowance on some reasonable basis excluding the interest part.

5. The learned AR of the assessee could not point out any defect in the order of the CIT(A) in relation to the above directions given by him in the light of the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (Supra). The finding of the learned of the CIT(A) on this issue is therefore upheld.

6. Subject to our observations made and directions given above, the appeal of the assessee is treated as dismissed.

Order pronounced in the open Court on 28.10.2015

Sd/-  
(N.K.Billaiya)  
**ACCOUNTANT MEMBER**

Sd/-  
(Sanjay Garg)  
**JUDICIAL MEMBER**

Mumbai, Dated: 28/10/2015.

\* M.P..

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.