

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.454/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of  
Income Tax,  
Central Circle – 3, Aayakar Bhavan,  
63, Race Course Road,  
Coimbatore – 641 018.

(अपीलार्थी/Appellant)

M/s GVG Paper Mills Limited,  
v. No.168/2, Sikkandar Batcha Street,  
Gandhi Nagar,  
Udumalpet – 642 154.

PAN : AABCG 1438 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Ann Mary Baby, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri A. Dhananjayan, FCA

सुनवाई की तारीख/Date of Hearing : 25.05.2017

घोषणा की तारीख/Date of Pronouncement : 29.06.2017

## **आदेश / O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 18.11.2016 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is deduction claimed by the assessee under Section 80-IA of the Income-tax Act, 1961 (in short 'the Act').

3. Smt. Ann Mary Baby, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 80-IA of the Act to the extent of ₹2,52,99,350/-. According to the Ld. D.R., turbine division and paper division form part of single unit, therefore, turbine unit cannot be considered to be an independent unit capable of operating on its own. According to the Ld. D.R., turbine unit was formed by splitting of existing paper unit by replacing the old boilers and pressure reduction steam valves. The steam turbine division used fuels costing very high amount to produce steam, which is essential for running the turbine division for generating electricity. The cost of fuel was never changed to turbine division. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. Referring to the order of this Tribunal for assessment year 2011-12, the Ld. D.R. submitted that the issue was remitted back to the file of the Assessing Officer by order dated 10.08.2016 to verify whether the assessee was maintaining separate books of account or not. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

5. On the contrary, Shri A. Dhananjayan, the Ld. representative for the assessee, submitted that this Tribunal for assessment year 2011-12 remitted back the issue to the file of the Assessing Officer to verify whether the assessee maintains separate books of account for turbine division and how the value of electricity produced was calculated. Consequent to the order of this Tribunal, the Assessing Officer examined the matter and by an order dated 26.12.2016, after verifying the books maintained by the assessee for turbine division and the audit report in Form 10CCB for power generating divisions, including windmill division, found that the claim of the assessee is justified. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. An identical issue came before this Tribunal for assessment year 2011-12 in the assessee's own case in I.T.A. No.1452/Mds/2016. This Tribunal by an order dated 10.08.2016, after referring to an earlier order of this Tribunal for assessment year 2003-04, remitted back the matter to the file of the Assessing Officer by observing as under at para 11:-

“11. A clear finding given by the Tribunal that the assessee had maintained separate books of account for the Turbine Division in the years in appeal before it. This was one of the reasons why the Tribunal accepted the plea of the assessee that the value of the power generated by Turbine Division was eligible for deduction u/s 80IA of the Act. However, for impugned assessment year we find that one of the authorities below has verified whether the assessee maintained separate books of account for Turbine Division and how the value of the electricity produced was calculated. We are, therefore, of the opinion that the matter requires fresh look by the authorities below. Thus, insofar as the claim of deduction u/s 80IA for the Turbine Division, we set aside the orders of the authorities below and remit it to the file of the Assessing Officer for consideration afresh in accordance with law.”

7. Consequent to the direction of this Tribunal, the Assessing Officer examined the issue and found that the assessee was maintaining separate books of account for turbine division and it was also found that the assessee was calculating by adopting ₹4.80 per unit which is normal market rate fixed by TNEB. In fact, the Assessing Officer observed in the assessment order dated 26.12.2016 as follows:-

“4. In response to the hearing notice dated 25/10/2016, Shri A. Dhananjayan, authorized representative of the assessee was present and case discussed. The assessee is maintaining separate books of accounts for the Turbine Division. Audit Report in Form No.10CCB for power generating divisions like turbine division and windmill divisions, separate P&L A/c and

balance sheet were also submitted. Details of electricity produced, rate per unit and calculation for arriving at the value of the electricity produced were submitted and verified. The assessee company has adopted ₹4.80 per unit which is the normal market rate fixed by TNEB.”

8. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9. The next ground of appeal is with regard to claim of depreciation on windmill.

10. We have heard Smt. Ann Mary Baby, the Ld. Departmental Representative and Shri A. Dhananjayan, the Ld. representative for the assessee. This issue was considered by this Tribunal in the assessee's own case for assessment year 2011-12. This Tribunal after referring to the judgment of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. v. ACIT (231 CTR 368), allowed the claim of the assessee. In fact, the CIT(Appeals) has placed his reliance on the judgment of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. (supra). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 29<sup>th</sup> June, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 29<sup>th</sup> June, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai
4. Principal CIT (Central) 2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.