

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.6693/DEL/2014  
Assessment Year:2011-12

ACIT Circle 22(2) New Delhi	v.	M/s SBEC Bioenergy Ltd. 1400, Hemkunt tower, 98, Nehru Place New Delhi
		TAN/PAN:AADCS9993C
(Appellant)		(Respondent)

Appellant by:	Shri Kaushlendra Tiwari, D.R.		
Respondent by:	Shri P.S. Kashyap, C.A.		
Date of hearing:	25	10	2017
Date of pronouncement:	25	10	2017

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against impugned order dated 23/9/2014, passed by the Id. CIT (Appeals)-X, Delhi for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for assessment year 2011-12. The sole ground raised by the Revenue in the grounds of appeal is as under:-

- 1. The Id. CIT(A) has erred on facts and in law in deleting addition of Rs.1,91,51,625/- made by Assessing Officer on account of sale value of exhaust steam supplied to SSL.*

2. At the outset, the ld. counsel for the assessee submitted that the issue raised by the Revenue stands covered by the decision of the Tribunal in assessee's own case right from assessment year 2006-07 to 2010-11.

3. The assessee-company is engaged in the business of generation and selling of power and bulk of the power is supplied to its holding company, M/s SBEC Sugar Ltd. (SSL), from whom it is receiving conversion charges. The surplus power is being supplied to UP State electricity Board (UPSEB). The ratio at which power is sold to SSL and UPSEB are the same. The Assessing Officer noted that the assessee-company had shown production of steam at 2,55,355 tonnes which was supplied to SSL free of cost instead of Rs.75/- per tonne being sold in earlier years. In response to show cause notice as to why no income has been accounted for on account of sale of steam supplied to SBEC Sugar Ltd. and the rate of steam sold to SSL should not be taken as Rs.236/- per tonne as done in earlier years by the Assessing Officer, assessee submitted detailed reply, which reads as under:-

*I. The sugar project cannot survive if it is to be liable to pay for exhaust steam at the rates proposed. In fact this condition on SSL to pay for the exhaust steam is totally unreasonable and unfair and any co-generation plant internationally pays no such charges.*

*II. A demand for any payment for exhaust steam is also unreasonable as it is supplied at 1 kg of exhaust pressure, which is after this steam has already been used in the turbine for electric generation. This in fact constitutes double payment for electricity and under the heading of a charge for steam. The supply of exhaust steam to the sugar plant in fact*

*has saved huge costs to SIAL who otherwise would have had to setup a condensing type of turbine, which would have been at a substantially higher cost to SIAL.*

SSL further pointed out as follows:

- *The conversion agreement dated 10.12.1998 never came into operation, as PICUP has not approved the contract.*
- *The SSL supplies baggase and water free of any charge to SIAL. Without these SIAL cannot generate power. In addition steam condensate is also supplied free of any charge.*
- *The steam that is supplied is exhaust steam, which has no value and cannot otherwise be used or sold. On the other hand, the baggase supplied to SIAL free of any charge is easily saleable by SSL for which it does not get any compensation. No reduction/adjustments are made on that account in the charges for electric power that are being paid by SSL.*

*In view of above, SSL stopped paying for charges of exhaust steam effect from Oct, 2001.*

*Thus, it was submitted that the conversion agreement dated 10.12.1998 did not come into operation at all since the same was subject to the approval of PICUP and no approval till date has been received from PICUP. Further, the invoicing for exhaust steam, being done @ Rs.75 per tonne, on the basis of an interim arrangement arrived at between SSL & SIAL has also been objected to by SSL for the reasons as explained above and they have stopped making payment for the same w.e.f. Oct, 2001.*

*Since considerable uncertainty had arisen in the realization of any amount against the supply of steam after Oct, 2001 and in view of the accounting standards notified by the*

*Central Government in Exercise of Powers u/s 145(2) of the Income Tax Act, 1961 requiring the assessee to apply the principle of prudence in applying accounting policies, such amount has not been recognized as revenue in this year and has not been included in the income for the year. This standard provides for the recognition of revenue from sale of goods and rendering of services and provides as under:-*

*Revenue from sales or service transactions should be recognized the requirements as to performance set out in paragraph 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection, revenue recognition should be postponed.*

*In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:*

*(1) The seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and seller retains no effective control of the transferred to the buyer and seller retains no effective control of the goods transferred to a degree usually associated with ownership and*

*(2) No significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of goods.”*

4. However, the Assessing Officer, took sale of steam at Rs.75 per tonne and made addition of Rs.1,91,51,625/-. While doing so, he also held that the issue, which has been decided by the Tribunal on earlier years, is sub-judice before the Hon'ble High Court; therefore, he is following the earlier assessment orders.

5. The ld. CIT(A) held that addition has been made on notional basis following earlier years assessment orders wherein this issue has been decided in favour of the assessee by the Tribunal in various years. Accordingly, following earlier years precedence, he deleted the said addition.

6. The ld. D.R., relied upon the order of the Assessing Officer, whereas the ld. counsel for the assessee relied upon the orders of the Tribunal in earlier years, a compilation of which has been filed separately before us.

7. On perusal of the impugned order as well as earlier years' orders, we find that this issue is coming right from assessment year 1999-2000, wherein consistently the Tribunal has been holding that such an addition cannot be sustained. The ld. CIT(A) in the impugned order has discussed the matter in a detailed manner right from pages 25 to 35, wherein the relevant portions of the earlier appellate order as well as Tribunal's order has been incorporated. Since the order of the ld. CIT (A) is in conformity with the precedence of the earlier Tribunal orders, therefore, respectfully following the judicial precedence, we also direct the Assessing Officer to delete the said addition and accordingly the order of the ld. CIT (A) is confirmed.

8. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 25<sup>th</sup> October, 2017.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 25th October, 2017

JJ:2510

Copy forwarded to:

1. Appellant
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3. CIT(A)
4. CIT
5. DR

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