

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.750 & 751/Mds/2017

निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

M/s Gita Wind Energy,
4/7, Thiru Vi Ka Road,
Mylapore, Chennai - 600 004.

v. The Income Tax Officer,
Business Ward 1(2) / Non-
Corporate Ward 1(2),
Chennai - 600 034.

PAN : AAJFG 7091 A
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Ravichandran, FCA

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 27.09.2017

घोषणा की तारीख/Date of Pronouncement : 30.11.2017

आदेश /ORDER

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

Both the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-2, Chennai, dated 13.01.2017 for the assessment years 2011-12 and 2012-13. Since common issue arises for consideration in both the appeals, we heard these appeals together and disposing of the same by this common order.

2. The only issue arises for consideration in both the appeals is with regard to depreciation claimed by the assessee on the windmills.

3. Shri V. Ravichandran, the Ld. representative for the assessee, submitted that the assessee-partnership firm is engaged in the business of generation of power through wind energy. During the assessment year 2011-12, the assessee purchased 4 windmills from M/s Rasi Seeds Pvt. Ltd. According to the Ld. representative, M/s Rasi Seeds Pvt. Ltd. is not related to the assessee at all. The assessee claimed depreciation on the cost of the asset. According to the Ld. representative, the total cost of the four windmills is ₹8.32 Crores. The assessee claimed depreciation of ₹3,32,80,000/- as against the total income of ₹49,20,485/-. In fact, the assessee claimed loss of ₹2,83,69,515/-. Referring to the assessment order, the Ld. representative submitted that the Assessing Officer rejected the claim of depreciation and price paid by the assessee being the cost of the asset. By invoking Explanation 3 to Section 43(1) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer found that the tax liability is reduced since the assessee was claiming depreciation on the cost paid to the vendor. According to

the Ld. representative, the assessee also filed a valuation report from the registered valuer. However, the same was rejected by the Assessing Officer. According to the Ld. representative, the written down value of the windmills in the books of the vendor, namely, M/s Rasi Seeds Pvt. Ltd. was ₹83,37,300/- as per Companies Act.

4. Placing reliance on the decision of Ahmedabad Bench of this Tribunal in Nirma Industries (P.) Ltd. v. DCIT (2014) 148 ITD 126, the Ld. representative for the assessee submitted that when the assessee filed a valuation report, it is incumbent upon the assessing authority to dislodge the same by bringing adequate material available on record in the form of Departmental Valuation Report. In the absence of Departmental Valuation Officer's report, the Assessing Officer cannot dislodge the report of the registered valuer. In this case, according to the Ld. representative, the Assessing Officer without getting the Departmental Valuation Officer's report, has rejected the report of the registered valuer, therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer. Moreover, the vendor is not related to the assessee, therefore, it cannot be said that the intention of acquisition of windmills was to reduce the tax liability by claiming higher depreciation.

5. The Ld. representative for the assessee has also placed reliance on the decision of Pune Bench of this Tribunal in DCIT v. Jaya Hind Sciaky Ltd. (2016) 156 ITD 547 and submitted that when the fair market value was certified by the registered valuer and the Assessing Officer has not obtained any report from Departmental Valuation Officer, then the valuation report submitted by the assessee ought to have been accepted, therefore, it cannot be said that the transaction was to reduce the tax liability. For similar proposition, the Ld. representative has also placed reliance on the decision of Mumbai Bench of this Tribunal in Western Maharashtra Flourine Chemical Industries v. JCIT (2006) 7 SOT 572 and also the judgment of Gujarat High Court in Ashwin Vanaspati Industries v. CIT 92002) 255 ITR 26.

6. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the assessee admittedly purchased four windmills from M/s Rasi Seeds Pvt. Ltd. during the assessment year 2011-12. According to the Ld. D.R., the income declared from the windmills was ₹49.20 lakhs before depreciation. In fact, M/s Rasi Seeds Pvt. Ltd. had also availed depreciation on the very same windmills and the written down value in the hands of M/s Rasi

Seeds Pvt. Ltd. was almost NIL. Therefore, according to the Ld. D.R., the Assessing Officer invoked the provisions of Explanation 3 to Section 43 of the Act to adopt the written down value of the windmills in the hands of M/s Rasi Seeds Pvt. Ltd. as the actual cost in the hands of the assessee. According to the Ld. D.R., the Assessing Officer was satisfied that the very object of transfer of windmills was to reduce the tax liability by claiming depreciation on the enhanced cost. The Assessing Officer, in fact, examined the valuation report and rejected the same since it has not provided the method for adopting the valuation. The rate of depreciation was also not mentioned. Therefore, according to the Ld. D.R., the CIT(Appeals) has confirmed the order of the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The cost of acquisition of the windmills by the assessee from M/s Rasi Seeds Pvt. Ltd. is not in dispute. The only objection of the Ld. Departmental Representative is that the cost of the asset has to be taken at the written down value in the hands of the vendor, namely, M/s Rasi Seeds Pvt. Ltd. It is not the case of the Revenue that M/s Rasi Seeds Pvt. Ltd. is related to the assessee-partnership firm.

8. We have carefully gone through Explanation 3 to Section 43(1) which clearly says that when the asset acquired by the assessee was used by any other person before the date of acquisition for the purpose of their business or profession, then in case the Assessing Officer satisfied that the main object for transfer of such asset is directly or indirectly to reduce tax liability by claiming depreciation with reference to enhanced cost, the actual cost to the assessee shall be such amount as the Assessing Officer would determine having regard to all the circumstances of the case. In this case, the Assessing Officer has taken written down value in the case of M/s Rasi Seeds Pvt. Ltd. The assessee has filed the valuation report from a registered valuer before the Assessing Officer. The Assessing Officer without referring the matter to the Departmental Valuation Officer to get another technical report, has examined the same and rejected the report on the ground that the report of the registered valuer does not provide the method of valuation. It is not in dispute that the Assessing Officer is not a technical expert for valuing windmills. When the assessee has filed a technical report from a registered valuer, as found by the Ahmedabad Bench of this in Nirma Industries (P.) Ltd. (supra), the

same can be dislodged by another technical report from the valuer who is expert in valuing the windmills. A similar view was taken by Pune Bench of this Tribunal in *Jaya Hind Sciaky Ltd.* (supra). In the absence of any technical report from Departmental Valuation Officer, this Tribunal is of the considered opinion that the Assessing Officer cannot reject the registered valuer's report filed by the assessee.

9. Moreover, it is not in dispute that the assessee acquired the windmills at ₹8.32 Crores. It is also not in dispute that the assessee has in fact paid ₹8.32 Crores to M/s Rasi Seeds Pvt. Ltd. When the vendor is not related to the assessee, it is not known how the assessee is going to get benefit by claiming depreciation on the actual cost paid to the vendor. The matter would stand differently in case both the assessee and the vendor, namely M/s Rasi Seeds Pvt. Ltd. are related parties. Merely because the assessee is claiming depreciation on the cost of the asset being the cost paid to the vendor, it cannot be presumed that tax liability was reduced considerably. Section 32 of the Act provides for depreciation on the actual cost. Therefore, unless and until there is a material to suggest that intention of the parties to transfer the windmills to the

assessee was to reduce the tax liability, this Tribunal is of the considered opinion that Explanation 3 to Section 43(1) of the Act cannot be applied. In this case, no such material is available to indicate that the object of transfer of windmills to the assessee is to reduce the tax liability by claiming depreciation on the enhanced cost. It is nobody's case that the cost paid by the assessee is not the market value. In those circumstances, this Tribunal is of the considered opinion that the Assessing Officer is not justified in disallowing the claim of the assessee. Therefore, we are unable to uphold the order of the lower authority. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow the depreciation as claimed by the assessee.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 30th November, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 30th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Chennai-34
4. Principal CIT-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.