

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 2397/Ahd/2013
WITH
CO No. 86/Ahd/2014
(Assessment Year: 2010-11)

The DCIT,
Circle-4, Ahmedabad,
Navjivan Turst Bldg., Off. Ashram
Road, Ahmedabad

Appellant

Vs.

M/s. Kadam Reality Pvt. Ltd.,
34, Vishwakatu-II IOC, Petrol Pump,
Bodkdev, Ahmedabad

Respondent

PAN: AADCK0211F

राजस्व की ओर से/By Revenue : Shri V. K. Singh, Sr. D.R.
आवेदक की ओर से/By Assessee : Shri S. N. Divatia, A.R.
सुनवाई की तारीख/Date of Hearing : 07.11.2017
घोषणा की तारीख/Date of
Pronouncement : 29.11.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This Revenue's appeal and assessee's cross objection for assessment year 2010-11 emanate from the CIT(A)-VIII, Ahmedabad's order dated 03.07.2013 in case no. CIT(A)-VIII/DCIT/Cir.4/92/12-13, reversing disallowance of depreciation of Rs.55,87,121/- pertaining to Wind turbine generator and affirming Assessing

Officer's action working out book profits u/s. 115JB in view of adjustments made in respect of depreciation disallowance; respectively, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

2. We come to Revenue's grievance first. Its sole argument is that the assessee had failed to prove commissioning and generation of power w.e.f. 31.03.2010 regarding the wind turbine generator in question. We find that the CIT(A)'s order under challenge discusses at length all the relevant facts as well as Assessing Officer's findings as under:

"3.3 Decision:

I have carefully perused the finding given by the A.O and submissions made by the appellant. I have also gone through the paper book submitted by the appellant and various evidences attached in the paper book. It has been submitted by the appellant that there is no new evidence in the paper book and all the documents were submitted before the A.O as well.

The A.O has observed the depreciation claimed by the appellant on Wind Turbine Generator (WTG) on the ground that it was not put to use during the F.Y. according to him. The appellant could not furnish any details regarding generation of power on 31/03/2010. The appellant on the other hand has submitted that the WTG was properly commissioned on 31/03/2010, it generated 1374 units of electricity between the period 31/03/2010 to 27/04/2010. The agreement for sale of wind Energy was executed on 31/03/2010 with said Electricity Co. and therefore the WTG was commissioned, installed, put to use as on 31/03/2010. The appellant has accordingly claimed that the depreciation should be allowed. After carefully considering the various evidences I am of the considered opinion that the appellant is entitled to depreciation as all the conditions required for claiming, depreciation has been fulfilled. The appellant has enclosed a certificate on page No.55 on the paper book which certifies that the WTG has been commissioned and put to use on 31/03/2010. The certificate has been issued by Sriram EPC Ltd., Chennai, the installer of the WTG. On page No.56 of the paper book the appellant has given a document which has been issued by Tirunelveli Electricity Distribution Circle office of the Superintendent Engineer. The statement showing the energy generated through Wind Mill for the month of April 2010 and initial reading has been taken on 31/03/2010 and final reading on 27/04/2010. The export of electricity as on 31/03/2010 was 0.040 and that on 27/04/2010 was 4.620. Further on page No.57 there is a letter from Superintendent Engineer, Tirunelveli Electricity Distribution Circle which says that the WTG has been commissioned satisfactorily on 31/03/2010.

All the above documents/evidences show that the WTG was in fact commissioned and put to use on 31/03/2010. The statement showing energy generated also showing certain positive reading as on 31/03/2010. The Tamil Nadu state electricity has also certified that the WTG was commissioned on 31/03/2010. Further, the party who has sold and commissioned the WTG has also given a certificate certifying the installation and commissioning on 31/03/2010. In view of the clear evidences as mentioned above the disallowance of depreciation on WTG made by the A.O was not justified. There is an overwhelming evidence to prove that the WTG was commissioned and put to use on 31/03/2010. Therefore, the A.O is directed to delete the disallowance."

3. We confronted the Revenue the above extracted fact that the assessee had successfully proved its wind turbine generator to have been commissioned on 31.03.2010 as per the State Electricity Board Certificate. Learned Departmental Representative fails to dispute the above extracted facts taken note in the lower appellate's findings based on correct appreciation of evidence under challenge reversing Assessing Officer's action. The Revenue's sole substantive ground as well as its main appeal ITA No. 2397/Ahd/2013 fail.

4. We now come to assessee's cross objection 86/Ahd/2014 seeking to reverse both the lower authorities' action re-computing book profit u/s.115JB of the Act after adding disallowance / addition pertaining to wind turbine generator and cars. Mr. Divatia fairly points out at the outset that the assessee is no more interested in pressing for the same. He further fails to indicate any irregularity or infirmity in the impugned computation. We therefore reject assessee's instant cross objection as not pressed.

5. This Revenue's appeal ITA No.2397/Ahd/2013 as well as assessee's CO No.86/Ahd/2014 are dismissed.

[Pronounced in the open Court on the 29th day of November, 2017.]

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 29/11/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad

6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।