IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

ITA No. 78/VIZ/2017
(Asst. Year : 2011-12)

ACIT, Circle-1, Eluru.	vs.	M/s. Sree Kalyani Agro Industries Pvt. Ltd., Prathipadu, Pentapadu Mandal, West Godavari District.
(Appellant)		PAN No. AAFCS 2116 K (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri Deba Kumar Sonawal – CIT DR

Date of hearing : 20/12/2017.
Date of pronouncement : 25/01/2018.

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Guntur, dated 28/11/2016 for the Assessment Year 2011-12.

2. The first ground of appeal relating to Carbon Emission Reductions (CER's) is a capital receipt or revenue receipt. According to the Assessing Officer, the amount received by the assessee is a revenue receipt and it has to be taxed.

3. On appeal, ld. CIT(A) by following the decisions of the coordinate bench of the tribunal in the case of M/s. Varam Power Projects Pvt. Ltd. and My Home Power Ltd., deleted the addition made by the Assessing Officer by observing that the carbon credit is a capital receipt.

4. The revenue is in appeal before the tribunal.

5. At the outset, ld. counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of the tribunal in the case of M/s.Varam Power Projects Pvt. Ltd. vs. ACIT in ITA No. 651/Vizag/2014 by order dated 29/11/2017.

6. On the other hand, ld. Departmental Representative fairly accepted that the issue is covered in favour of the assessee, however, he strongly supported the order passed by the Assessing Officer.

7. We have heard both the parties, perused the material available on record and orders of the authorities below.

8. The issue involved in this appeal is with regard to carbon credit is a capital receipt or a revenue receipt. The very same issue has been considered by the coordinate bench of the tribunal in the case of M/s. Varam Power Projects Pvt. Ltd. (supra) by following the decision of the Hon'ble Jurisdictional High Court in

the case of *CIT vs. My Home Power Ltd*. in ITTA No. 60/2014 dated 19/02/2014 and held that carbon credit is a capital receipt. The relevant portion of the order is extracted as under:-

> *"7. We have heard the rival submissions and perused the materials placed on record. The Ld.CIT(A) allowed the appeal of the assessee and held that the carbon credits are capital receipts following the decision of jurisdictional High Court in the case of My Home Power Ltd. cited supra. The Hon'ble ITAT, Hyderabad in the case of My Home Power Ltd. has held that the sale of carbon credits is not taxable and they are capital receipts. The relevant part of the discussion is extracted as under:*
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> > *'24. We have heard both the parties and perused the material on record. Carbon credit is in the nature of "an entitlement" received to improve world atmosphere and environment reducing- carbon, heat and gas emissions. The entitlement earned for carbon credits can, at best be regarded as a capital receipt and cannot be taxed as a revenue receipt It is not generated or created due to carrying on business but it is accrued due to "world concern" It has been made available assuming character of transferable right or entitlement only due to world concern. The source of carbon credit is world concern and environment Due to that the assessee gets a privilege in the nature of transfer of carbon credits. Thus, the amount received for carbon credits has no element of profit or gain and it cannot be subjected to tax in any manner under any head of income. it/s not liable for tax for the assessment year under consideration in terms of sections 2(24), 28, 45 and 56 of the income-tax Act, 1961, Carbon credits are made available to the assessee on account of saving of energy consumption and not because of its business. Further, in our opinion, carbon credits cannot be considered as a b/-product it is a credit given to the assessee under the Kyoto Protocol and because of international understanding Thus, the assessee's who have surplus carbon credits can sell them to other assesses to have capped emission commitment under the Kyoto Protocol Transferable carbon credit is not a result or incidence of one's business and it is a credit for reducing emissions. The persons having carbon credits get benefit by selling the same to a person who needs carbon credits to overcome ones negative point carbon credit The amount received is*

not received for producing and/or selling any product, b/-product or for rendering any service for carrying on the business. In our opinion, carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt For this proposition, we place reliance on the judgment of the Supreme Court in the case of CIT vs. Maheswari Devi Jute Mills Ltd (57 17W 36) wherein held that transfer of surplus loom hours to other mill out of those allotted to the assessee under an agreement for control of production was capital receipt and not income. Being so, the consideration received by the assessee is similar to consideration received by transferring of loom hours. The Supreme Court considered this fact and observed that taxability of payment received for sale of loom hours by the assessee is on account of exploitation of capital asset and it is capital receipt and not an income. Similarly, in the present case the assessee transferred the carbon credits like loom hours to some other concerns for certain consideration. Therefore, the receipt of such consideration cannot be considered as business in and it is a capital receipt Accordingly, we are of the opinion that the consideration received on account of carbon credits cannot be considered as income as taxable in the assessment year under consideration. Carbon credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns. Credit for reducing carbon emission or green house effect can be transferred to another party' in need of reduction of carbon emission. It does not increase profit in any manner and does not need any expenses. It is a nature of entitlement to reduce carbon emission, however, there is no cost of acquisition or cost of product to get this entitlement Carbon credit is not in the nature of profit or in the nature of income.

25. Further, as per guidance note on accounting for Self-generated Certified Emission Reductions (CER5) issued by the institute of Chartered Accountants of India (ICAI) in June, 2009 states that CERs should be recognized in books when those are created by (J/VFCCC and/or unconditionally available to the generating entity. CERs are inventories of the generating entities as they are generated and held for the purpose of sale in ordinary course. Even though CERs are intangible assets those should be accounted as per AS-2 (Valuation of inventories) at a cost or market price, whichever is lower. Since CERs are recognized as inventories, the

generating assessee should apply AS-9 to recognize revenue in respect of sale of CERs."

7.1 The Hon'ble Jurisdictional High Court in the case of My Home Power Ltd., upheld the view taken by Hon'ble ITAT, Hyderabad and the relevant part of the order is extracted as under:

"We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course business but it is generated due to environmental concerns." We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."

Facts of the case are similar and the order of the jurisdictional High Court is binding on the lower courts, thus respectfully following the judgment of the Hon'ble Jurisdictional High Court we hold that the carbon credits are capital receipts and cannot' be considered as business income. Accordingly, we uphold the order of the CIT(A) and dismiss the appeal of the revenue."

We Therefore, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of My Home Power Ltd. (supra), we find no infirmity in the order passed by the ld.CIT(A). Thus, this ground of appeal raised by the revenue is dismissed.

9. So far as second ground of appeal relating to deletion of addition of Rs. 50 lakhs, it is submitted before us that the Assessing Officer has made a double addition and therefore ld.CIT(A) has deleted the addition made by the Assessing Officer.

We find that the ld. CIT(A) has deleted the addition by considering the relevant facts which are reproduced as under:-

"In the computation of assessed income the AO has proceeded as under:-

Total income before current year loss as per ROI dated 29/09/2011	Rs. 1,09,24,934/-
Less: Current year loss	NIL
Less: Loss from eligible business (Power Division) Not allowed	NIL
Add: Income from non-eligible business of power division	Rs. 1,65,97,913/-
Add: Total income admitted during survey	Rs. 50,00,000/-
Total income assessed (rounded off)	**Rs. 3,25,22,850/-**

The total income of Rs. 109.25 lakhs adopted by the AO is based on the computation of income filed by the appellant along with the revised ITR. Its bifurcation is as under:-

Income before claiming exemption u/s. 80IA(IV)(a) as per Original return filed on 29/09/2011	*5,924,934*
ADD: Income offered for the above assessment year at the time of 133A operation on 23/08/2012	*5,000,000*
	10,000,000

The above computation of income filed with revised ITR shows that the additional income offered under section 133A is already taken care of in the figure of Rs. 109.25 lakhs. Again adding Rs.50 lakhs, leads to double addition.
AO is directed to delete the same."

10. From the above, it is very clear that the Assessing Officer has made the addition twice and therefore, the ld. CIT(A) deleted the addition. We find no infirmity in the order passed by the ld.CIT(A). Therefore, this ground of appeal raised by the revenue is dismissed.

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

Order Pronounced in open Court on this 25th day of Jan., 2018.

Sd/-	sd/-
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
Accountant Member	**Judicial Member**

Dated : 25th January, 2018.
vr/-
Copy to:

1. *The Assessee* - M/s. Sree Kalyani Agro Industries Pvt. Ltd., Prathipadu, Pentapadu Mandal, West Godavari District.
2. *The Revenue* - ACIT, Circle-1, Eluru.
3. *The Pr.CIT, Rajahmundry.*
4. *The CIT(A)-2, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.