

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3156/Chny/2016

निर्धारण वर्ष / Assessment Year : 2011-12

&

आयकर अपील सं./ITA No.37/Chny/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of  
Income Tax,  
Corporate Circle – 1(2),  
Chennai - 600 034.

v. M/s Clarion Wind Farm Pvt. Ltd.,  
4<sup>th</sup> floor, Sigapi Achi Building,  
18/3, Rukmani Lakshmi pathy Road,  
Egmore, Chennai - 600 008.

(अपीलार्थी/Appellant)

PAN : AADCC 4348 P

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Gopikrishna, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 21.06.2018

घोषणा की तारीख/Date of Pronouncement : 26.06.2018

### आदेश / O R D E R

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

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Chennai, 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. Shri N. Gopikrishna, the Ld. Departmental Representative, submitted that the assessee has filed additional material before the CIT(Appeals) in the form of Memorandum of Understanding, copy of Arbitration Tribunal order and account copy of M/s Soundarraja Mills, etc. According to the Ld. D.R., the CIT(Appeals) without giving any opportunity to the Assessing Officer, admitted the same and allowed the claim of the assessee. Referring to Rule 46A of Income-tax Rules, 1962, the Ld. D.R. submitted that when the assessee filed additional material, an opportunity ought to have been given to the Assessing Officer to controvert the contentions of the additional material filed by the assessee. Since such an opportunity was not given, according to the Ld. D.R., the matter may be remitted back to the file of the Assessing Officer.

3. We heard Shri R. Sivaraman, the Ld.counsel for the assessee also. It is an undisputed fact that the assessee filed additional material before the CIT(Appeals) to support its claim. The CIT(Appeals) without giving any opportunity, has allowed the claim of the assessee on the basis of the said additional material. We have carefully gone through the provisions of Rule 46A of the Income-tax Rules, 1962. When the CIT(Appeals) admitted additional evidence filed by the assessee, an

opportunity should be given to the Assessing Officer to examine the genuineness of the same. Since such an opportunity was not given, this Tribunal is of the considered opinion that there is a clear violation of Rule 46A. Therefore, the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter on the basis of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

4. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on 26<sup>th</sup> June, 2018 at Chennai.

Sd/-  
(अब्राहम पी.जॉर्ज)  
(Abraham P. George)  
लेखा सदस्य/Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 26<sup>th</sup> June, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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