

आयकर अपीलीय अधिकरण, 'ए' SMC न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' A ' SMC BENCH : CHENNAI

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

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

आयकर अपील सं./I.T.A.No.425/CHNY/2018

निर्धारण वर्ष /Assessment year :2014-15

M/s.Kailash Wind farms,
22,2nd street, Kumar Nagar East,
Tirupur 641 602.

(अपीलार्थी/Appellant)

Vs. The Income Tax officer,
Ward -1(1),
Tirupur.

[PAN AAMFK 6643 H]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar,Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by : Mr.B.Sagadevan, JCIT,D.R

सुनवाई की तारीख/Date of Hearing : 12 -07-2018
घोषणा की तारीख /Date of Pronouncement : -07-2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-3, Coimbatore, dated 28.11.2017 for the assessment year 2014-15.

2. Shri S.Sridhar, the Id. Counsel for the assessee submitted that the only issue arises for consideration is disallowance of claim of assessee u/s.80-IA of the Act. According to the Id.A.R, the assessee

claimed deduction of ₹26,31,820/- u/s.80(IA) of the Act. According to Id. Counsel for the assessee, the assessee purchased the windmill as a going concern. The Id. Assessing Officer disallowed the claim of assessee on the ground that the windmill undertaking was formed by transfer of machinery, which was earlier used by other company. Further, the Id.A.R clarified that the windmill was purchased by the assessee as a going concern; therefore, it is not a case of formation of undertaking by using the machinery, which was used by the other company. Hence, the assessee is eligible for deduction u/s.80-IA of the Act for the remaining period.

3. On the contrary, Mr.B.Sagadevan, Id. Departmental Representative submitted that for the purpose of claiming deduction u/s.80-IA of the Act, the assessee is to fulfill the conditions provided u/s.80-IA(3) of the Act. The Id.D.R submitted that the first condition is that the machinery shall not be transferred from other unit or plant. In other words, the machinery shall not be used by another undertaking. In this case, admittedly, the machinery namely windmill was used by the other company. Therefore, the assessee is not eligible for deduction u/s.80-IA(3) of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The only dispute between the assessee and the Revenue, is that the machinery, namely

windmill, was earlier used by other company. The assessee claims that the wind mill was purchased by the assessee as a going concern and does not form new undertaking. This fact is not disputed by the Revenue. In other words, the purchase of the wind mill undertaking as a going concern by the assessee is not disputed by the Revenue. Therefore, this Tribunal is of the considered opinion that the assessee is eligible for deduction u/s.80-IA of the Act in respect of remaining period. Hence, orders of both the authorities below are set aside and the Id. Assessing Officer is directed to allow the claim of deduction made u/s.80-IA of the Act.

5. In the result, the appeal of the assessee is allowed.

Order pronounced on 09th August, 2018, 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: 09th August, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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