

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 118/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

Dy. Commissioner of Income-Tax, CC 3(1), Room No. 1924, 19 th Floor, Air India Bldg., Nariman Point, Mumbai-400 021	Vs.	Wind World Wind Farms (Krishna) Ltd. A-9, Enercon Tower, Veera Desai Road, Veera Indl. Estate, Andheri (W), Mumbai-400 053
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACE3529M		

प्रत्याक्षेप सं./ CO No. 250/Mum/2018

(Arising in ITA No. 118/Mum/2018 for AY 2014-15)

Wind World Wind Farms (Krishna) Ltd. A-9, Enercon Tower, Veera Desai Road, Veera Indl. Estate, Andheri (W), Mumbai-400 053	Vs.	Dy. Commissioner of Income-Tax, CC 3(1), Room No. 1924, 19 th Floor, Air India Bldg., Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri SK Bepari, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Rushabh Mamania, AR

सुनवाई की तारीख / Date of hearing:	24.10.2018
घोषणा की तारीख / Date of pronouncement :	24.10.2018



आदेश / ORDER

**महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:**

These cross appeal by the assessee are arising out of the order of Commissioner of Income Tax (Appeals)-51, Mumbai [in short CIT(A)], in appeal No. CIT(A)-51/DC CC-3(1)/IT-206/16-17 vide dated 04.10.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle 3(1), Mumbai (in short 'DCIT/ AO') for the A.Y. 2014-15 vide dated 29.12.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income under section 14A of the Act read with Rule 8D of the IT Rules, 1962 (hereinafter the 'Rules'). For this Revenue has raised the following grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of ₹ 17,28,77,887/- u/s 14A of the IT Act rwr 8D.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the decision of Garware Wall Ropes in ITA no 4521/M/2012 and the order of ITAT in AY 2012-13 in assessee's own case when the revenue has not accepted the above order and



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appealed against the above order in the Bombay High Court.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating on the issue of re-computation of book profit as the issue of re-computation of book profit is squarely covered in the favour of revenue by the order of ITAT in the case of Viraj Profiles Ltd. (2016) 156 ITD 72.”

3. The learned Counsel for the assessee stated that there is no exempt income claimed by assessee in the return of income and once there is no exempt income, no disallowance of expenses can be made by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules. For this the learned Counsel for the assessee relied on the decision of Hon'ble Bombay High Court, Nagpur Bench in the case of Pr. CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016, wherein this issue has been considered and finally following the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: -

“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act,



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1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.”

When this was confronted to the learned Departmental Representative he fairly conceded.

4. After hearing rival contentions and going through the facts and circumstances of the case, admitted position on facts is that there is no exempt income claimed by assessee. This fact is noted by the AO on the very first of the assessment order para 3 stating, *“the fact of the case is that assessee has not claimed any exempt income”* Once there is no exempt income, the issue is squarely covered by the decision of Hon’ble Bombay High Court in the case of Ballarpur Industries Limited (supra). Respectfully following the Hon’ble Jurisdictional High Court, I confirm the order of CIT(A) deleting the disallowance.



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5. As regards to the CO of the assessee, which is supportive of the order of CIT(A) and hence, the same has become infructuous and dismissed.

6. In the result, both the appeals of Revenue as well as CO of assessee are dismissed.

Order pronounced in the open court on 24-10-2018.

आदेश की घोषणा खुले मे दिनांक 24-10-2018 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 24-10-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI