

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I.T.A. Nos. 2380 and 3049/Chny/2017
Assessment Years:2013-14 & 2014-15

The Deputy Commissioner of
Income Tax,
Corporate Circle 4(2),
Chennai 600 034.

M/s. Kanishk Metal Recycling Limited,
Vs. No. 7, Thiru-Vi-Ka 3rd Street,
Royapettah High Road, Mylapore
Chennai 600 004.
[PAN:AAECK4041Q]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mrs. Pavuna Sundari, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri S. Ganesan, F.C.A.
सुनवाई की तारीख/ Date of hearing : 20.11.2018
घोषणा की तारीख /Date of Pronouncement : 27.11.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the Revenue are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 8, Chennai dated 28.06.2017 and 04.10.2017 relevant to the assessment years 2013-14 and 2014-15 respectively. The only effective common ground raised in both the appeals of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance of depreciation.

2. The assessee has claimed depreciation on windmills, which was purchased from two companies. The Assessing Officer has observed that the previous owners have utilized these assets and claimed the depreciation

@ 80% for the utilized years, the WDV was very meager and the assessee had purchased the same at a very higher rate. By invoking the provisions of Explanation 3 to section 43 of the Act, the WDV of the assets to the previous owner re taken as the actual cost to the assessee and accordingly, the excess depreciation was added back to the income of the assessee for both the assessment years. On appeal, after considering the submissions of the assessee, the Id. CIT(A) allowed the claim of depreciation.

3. By referring to the grounds of appeal, the Id. DR has submitted that the said windmills were used by M/s. Vridhi and M/s. Sri Annamalaiyars Paper Mills Pvt. Ltd. before its acquisition by the assessee. By referring to Explanation 3 to section 43(1) of the Act, which envisages that the Assessing Officer "shall" determined the actual cost of an asset in the circumstances where the asset is used by any other person before the date of acquisition by the assessee, the Id. CIT(A) was incorrect to allow the entire depreciation claimed by the assessee and pleaded for reversal of the appellate order for both the assessment years. On the other hand, the Id. Counsel for the assessee has strongly supported the orders of the Id. CIT(A).

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including valuation

report of the Approved Panel Valuer of the State Bank of India and other documents. In the appellate order, the Id. CIT(A) has given a finding that “the Assessing Officer did not raise any objections as to the market value determined by the Registered Valuer of the State Bank of India”. However, we find from the assessment order that there was no mention about the valuation report filed by the assessee. When the Bench specifically asked, the Id. Counsel for the assessee could not produce evidence for filing the valuation report before the Assessing Officer. Similarly, when the Department was asked to get the details from the assessment records, the Id. DR filed a letter dated 16.11.2018 submitted by the Assessing Officer [ACIT, CC-4(2)] and the content of the letter is reproduced as under:

“On verification of the miscellaneous records for the respective assessment years, it is seen that the assessee company has not filed any valuation report during the assessment proceedings. However, the assessee has filed Paper Book in respect of A.Yr. 2013-14 with the valuation report on 21.02.2018.”

The assessment for the assessment years 2013-14 and 2014-15 were completed on 31.03.2016 and 30.06.2016 respectively. It is clear from the above letter that the assessee has filed the valuation report before the Assessing Officer only after the Department filed the appeals for both the assessment years before the Tribunal. More so, if at all the valuation reports are filed before the Id. CIT(A), in the appellate order, there was no mention about obtaining remand report from the Assessing Officer and thus, the Id.

CIT(A) erroneously made a mention that “the Assessing Officer did not raise any objections as to the market value determined by the Registered Valuer of the State Bank of India”. Accordingly, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to examine the valuation reports, etc. and decide the issue afresh for both the assessment years by giving an opportunity of being heard to the assessee.

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

Order pronounced on the 27th November, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 27.11.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.