

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1708/M/2018
Assessment Year: 2012-13**

DCIT 3(3)(1), Room No.609, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Rolta Power Pvt. Ltd., 21 st Floor, Maker Tower "F", Cuffe Parade, Mumbai - 400 005 PAN: AADCR 8964L
(Appellant)		(Respondent)

Present for:

Assessee by : Shri D.G. Pansari, A.R.
Revenue by : **Shri Renu Kapoor, D.R.**

Date of Hearing : 24.04.2019
Date of Pronouncement : 30.04.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 19.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue is against the deletion of disallowance of Rs.1,13,52,784/- as made by the AO in respect of power and electricity expenses.

3. The facts in brief are that the assessee is engaged in the business of generation, supply and distribution of power and energy as well as trading in securities. And during the year

assessee filed the return of income on 28.09.2012 declaring a loss of Rs.3,40,07,272/- under the normal provisions of the Act and Rs.3,40,62,827/- under section 115JB of the Act which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny and statutory notices were issued and served upon the assessee. The AO during the course of assessment proceedings observed that the business of power generation has not started during the year under consideration and the assessee has claimed entire expenses by debiting the same to the P & L Account which were otherwise not related to trading activities and accordingly the AO asked the assessee to justify the claim of said expenses relating to power generation. The said query of the AO was replied by the assessee vide letter dated 30.10.2014 by submitting that assessee has already set up 5 MWP Grind Interactive Solar Photovoltaic Power Project at Pali District, Rajasthan during the assessment year 2011-12 and for setting up the said business the assessee had engaged employees to whom salaries were paid. The assessee also submitted that the expenses incurred after the date of setting up of the plant but before commencement of business are allowable expenses. The contentions of the assessee did not find favour with the AO and he disallowed and added the entire expenses claimed in respect of power and electricity of Rs.1,13,52,784/- to the income of the assessee besides making other additions.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by following the decision of the Tribunal in the case of Shapporji Pallonji Power Co. Ltd. in ITA NOS.4843

& 759/Mum/2006 and also the decision of the predecessor of Ld. CIT(A) and thus deleted the addition.

5. The Ld. A.R., at the outset, submitted before the Bench that the issue raised in the current appeal by the Revenue is squarely covered in favour of the assessee in assessee's own case in ITA No.6708/M/2016 A.Y. 2011-12 by the coordinate bench wherein the identical issue has been decided in favour of the assessee. The Ld. A.R. also submitted that at the time of passing the order by the Ld. CIT(A), the decision of the co-ordinate bench of the Tribunal was not available and therefore is being submitted and relied on now. The Ld. A.R., therefore, submitted before the Bench that the appeal of the Revenue may kindly be dismissed and order of the Ld. CIT(A) may be upheld.

6. The Ld. D.R., on the other hand, relied on the grounds of appeal and order of AO.

7. After hearing both the parties and perusing the material on record, we observe that identical issue was also involved in the preceding assessment year 2011-12 and the co-ordinate bench of the Tribunal has decided the same in favour of the assessee in ITA No.6708/M/2016 A.Y. 2011-12 vide order dated 21.12.2018. The operative part is reproduced as under:

"9. We notice that the Ld. CIT (A) has partly allowed the expenditure claimed by the assessee by followed the decision of the coordinate Bench rendered in the case of Shapporji Pallonji Power Corporation Ltd. ITA Nos. 4843 and 759/Mum/2006 in which it has been held that the business activities may be classified into two broad categories, firstly the activities which are in furtherance of setting up of a business and secondly the activities which are in furtherance of the commencement of the business after it has been set up. The business is set up when it is ready for takeoff but the activities following the setting up of business prior to its commencement constitute the essential activities for commencement of business and the expenditure incurred in carrying on such activities is allowable deduction under the head income from business. Since, the findings of the Ld. CIT (A) are based on the

decision of the coordinate Bench, we do not find any infirmity in the order of the Ld. CIT (A) to interfere with. We therefore uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue."

8. Since the facts of the case before us are materially same to the ones as decided by the co-ordinate bench of the Tribunal in ITA No.6708/M/2016 (supra), we, therefore, respectfully following the same dismiss the appeal of the Revenue by upholding the order of Ld. CIT(A).

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30.04.2019.

**Sd/-
(Sandeep Gosain)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 30.04.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.