

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.902/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015-16

The Dy. Commissioner of-
Income Tax,
Circle-1, No.3, Gandhi Road,
Salem-636 007.

Vs. M/s.GTP Wind Energy-
Pvt. Ltd.,
No.4/36, Bharathi Street,
Swarnapuri, Salem-636 004.

(अपीलार्थी/**Appellant**)

[**PAN: AAECG 8495 L**]
(प्रत्यर्थी/**Respondent**)

Department by : Mr.Marudha Pandian, JCIT
Assessee by : Mr.G.Baskar, Adv.
सुनवाई की तारीख/Date of Hearing : 08.07.2019
घोषणा की तारीख /Date of Pronouncement : 08.07.2019

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the Revenue against the Order of the Commissioner of Income Tax (Appeals), Salem-7, in ITA No.40/2017-18 dated 18.01.2019 for the AY 2015-16.

2. Mr. Marudha Pandian, JCIT, represented on behalf of the Revenue and Mr. G.Baskar, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.DR that the only issue in the Revenue's appeal was against the action of the Ld.CIT(A) in allowing the assessee's claim of deduction u/s.80IA of the Act, which had been disallowed by the AO in respect of wind mill. It was a submission that the assessee company had taken the wind mill undertaking as a going concern. The AO had disallowed the assessee's claim of deduction u/s.80IA on the ground that the transferor company had transferred the machinery, alone, being the wind mill and consequently, the assessee had not complied with the conditions specified in clause-(i) to Sec.80IA(3) of the Act and the assessee had acquired used plant and machinery being the wind mill, which had been used by the transferor company and WDV has come down to nearly 'zero'.

4. In reply, the Ld.AR submitted that the issue in this appeal is squarely covered by the decision of the co-ordinate Bench of this Tribunal in the case of Kailash Wind Farms, Tirupur vs. The ITO, in ITA No.425/Chny/2018 dated 09.08.2018, wherein, the co-ordinate Bench of this Tribunal had held that the assessee's claim was that the wind mill was purchased by the assessee as a going concern and does not form a new undertaking, consequently, the assessee is entitled for deduction u/s.80IA of the Act in respect of the remaining period. It was a submission that the Ld.CIT(A) had followed the decision of the co-ordinate Bench of this Tribunal in the case of Kailash Wind Farms, Tirupur vs. The ITO. He vehemently supported the order of the Ld.CIT(A).

5. We have considered the rival submissions.

6. As it is noticed that the issues in this appeal are squarely covered by the decision of the co-ordinate Bench of this Tribunal in the case of Kailash Wind Farms, Tirupur vs. The ITO and as the Revenue has not been able to point out with any decision contrary to the said decision of the co-ordinate Bench of this Tribunal, referred to supra, and as the Ld.CIT(A) has followed the judicial discipline in following the decision of the co-ordinate Bench of this Tribunal in the case of Kailash Wind Farms, Tirupur vs. The ITO, we do not find any reason to interfere with the order of the Ld.CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 08th day of July, 2019 in Chennai.

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08th July, 2019.

TLN

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