

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री इंद्रुनी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Inturi Rama Rao, Accountant Member &
Shri Duvvuru R.L. Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.393/Chny/2016
निर्धारण वर्ष/Assessment Year:2011-12

The Assistant Commissioner of
Income Tax, Circle 1,
Income Tax Office, IInd Floor, Christo
Building, Ootacamund 643 001.

M/s. Sri Janarthanan Spinning Mills,
Vs. 187-1, K.N.P. Road,
Karamadai 641 104.

[PAN:AAMFS4005M]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri A. Sundararajan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri N. Arjunraj, C.A. for Shri S. Sridhar,
Advocate
सुनवाई की तारीख/ Date of hearing : 17.10.2019
घोषणा की तारीख /Date of Pronouncement : 24.10.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 3, Coimbatore dated 16.11.2015 relevant to the assessment year 2011-12. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance of depreciation on windmill claimed by the assessee.

2. Brief facts leading to the ground for adjudication are that during the course of assessment proceedings, the Assessing Officer noticed that the

assessee had claimed depreciation @ 80% on used windmill located at Thandayarkulam Village, Tirunelveli, purchased by means of transfer from Shri S. Narayanan during the financial year 2010-11 at the cost of ₹.2,55,14,645/-. The assessee has included land purchase cost consisting of stamp duty and registration fee of ₹.2,18,645/- in the cost of purchase of windmill. The assessee has claimed 80% of depreciation on the windmill, i.e., ₹.2,04,11,716/-, by treating the cost of purchase of windmill at ₹.2,55,14,645/- as the actual cost of purchase. On verification of various particulars available on record, the Assessing Officer allowed the depreciation on windmill at ₹.24,580/- and the balance claim of ₹.2,03,87,136/- was brought to tax.

3. On appeal, after considering the submissions of the assessee, the Id. CIT(A) deleted the addition made by the Assessing Officer.

4. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the assessee has purchased the windmill from the previous owner on which the maximum depreciation was claimed by the seller and thereafter sold the same at an enhanced cost to the assessee and the assessee has claimed the depreciation at 80% of that cost which has resulted in reducing the tax liability of the assessee. It was further submission that the Assessing Officer has rightly adopted the WDV of the asset in the hands of the seller after obtaining necessary approval from the

JCIT and thus pleaded for confirming the assessment order by reversing the order passed by the Id. CIT(A).

5. On the other hand, the Id. Counsel for the assessee has submitted that the purchase of windmill by the assessee is not in dispute. The Assessing Officer has no material on record to prove that the transaction between the assessee and the seller is an arm's length or sham transaction. When the transaction of the assessee has not been held as non-genuine, the assessee cannot be brought within the purview of section (3) of sub-section (1) of section 43 of the Act and the WDV in the hands of the previous owner cannot be substituted as actual cost for making disallowance of depreciation claimed by the assessee and prayed for confirming the order of the Id. CIT(A).

6. Per contra, the Id. DR has argued that the Id. CIT(A) has not given any specific findings on the observations of the Assessing Officer that the seller is involved in the practice of purchase of windmill and claiming depreciation thereon at the rate of 80%. On the exhaustion of the depreciation claim, he was habituated to sell the same and purchase another windmill thereby maintaining the block unexhausted, which activity is nothing but entertaining accommodation entry and therefore, the issue needs further investigation.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The Assessing Officer substituted the WDV of the windmill in the hands of the previous owner as the actual cost to the assessee. The payment was verified by the Assessing Officer with the seller and there is also no dispute that the transaction is not between two related parties. However, by invoking the provisions to Explanation (3) to section 43(1) of the Act, the Assessing Officer disallowed depreciation of ₹.2,03,87,136/- against the claim of depreciation of ₹.2,55,14,645/- being the actual cost of purchase of windmill. On appeal, the Id. CIT(A) has observed that to bring the claim under the purview of the Explanation (3) to section 43(1) of the Act, it has to be established that the assessee is claiming an enhanced cost for reduction of liability to income tax. He further observed that the behaviour of the seller to invoke section 43(1) of the Act is not relevant. However, in the assessment order, the Assessing Officer has given an observation at para 3.4 (ii) that

“On analysis of Shri S. Narayanan’s return of income over a period of time, it is observed that Shri S. Narayanan is involved in the practice of purchase of windmill and claiming depreciation thereon at the rate of 80%. On the exhaustion of the depreciation claim, Shri S. Narayanan was habituated to sell the same and purchase another windmill thereby maintaining the block unexhausted”.

8. The Id. CIT(A) has not given any findings on the above observation of the Assessing Officer. Moreover, in the case of Navlakha Translines v. ITO in ITA No. 78/PN/2009, the previous owner of the windmill was not carried

out such activity as that of the previous owner (Shri S. Narayanan) in the present case. Therefore, the case law relied on by the Id. CIT(A) has no application to the facts of the present case. Accordingly, we direct the Id. CIT(A) to give findings on the above observations of the Assessing Officer after affording sufficient opportunities of hearing to both the parties. Thus, the ground raised by the Revenue is allowed for statistical purposes.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 24th October, 2019 at Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 24.10.2019

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.