

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.2181/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Malpani Tea Corporation,
S.No.150, Malpani House,
Sangamner, Ahmednagar-422605.

PAN : AACFD1713B

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-3,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 14.11.2019

घोषणा की तारीख / Date of Pronouncement : 19.11.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee is against the order of the CIT(A)-2, Pune dated 20.07.2017 for the assessment year 2014-15.

2. The grounds raised by the assessee are as under :-

1] *The learned CIT(A) erred in holding that the income on sale of Certified Emission Reduction / Carbon Credit was taxable as profits and gains of the assessee and thereby, erred in confirming the addition of Rs.31,003 /- in the hands of the assessee.*

2] *The learned CIT (A) failed to appreciate that the amount received by the assessee on sale of Certified Emission Reduction / Carbon Credit was a capital receipt in the hands of the assessee which was not taxable at all.*

3] *The learned CIT(A) erred in holding that the amount received on sale of Certified Emission Reduction / Carbon Credit was a benefit derived during the course of the business of the assessee and therefore, the same was taxable u/s 28(iv) r.w.s. 2(24)(vd).*

4] *The learned CIT(A) failed to appreciate that Certified Emission Reduction / Carbon Credit was received by the assessee on account of environmental concerns and not arising out of the business carried out and hence, the same could not be treated as an income of the assessee u/s 28(iv) r.w.s. 2(24)(vd).*

5] *Without prejudice to the above grounds, the learned CIT (A) erred in holding that the income received on sale of Certified Emission Reduction / Carbon Credit was not derived from the Industrial Undertaking and hence, the deduction u/s 80IA was not allowable to the assessee.*

6] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Before us, at the outset, ld. Counsel for the assessee brought our attention to the ground nos.1 to 4 and submitted that all these grounds revolve around “**the taxability of carbon credit receipts**”. The assessee has been argued before the revenue authorities and submitted that the same constitutes capital receipts and therefore it is taxable receipts. However, the revenue authorities rejected the assessee’s contention and treated the same as taxable receipt. In this regard, ld. Counsel brought our attention to various decisions of the Tribunal where I am one of the party. Relying on the Hon’ble Andhra Pradesh High Court’s judgement in the case of CIT vs. My Home Power Ltd. 46 taxmann.com 314 where the Hon’ble High Court already decided the issue in favour of the assessee holding that the carbon credit receipt are the capital receipts. In this regard, ld. Counsel brought our attention to para 3 to 7 of this judgement (supra). Further, ld. Counsel for the assessee mentioned that the said view of the Hon’ble Andhra Pradesh High Court was upheld by the Jurisdictional High Court in the case of Pr.CIT vs. M/s. Dodson Lindblom Hydro Power Pvt. Ltd. vide Income Tax Appeal No.1820 of 2016 dated 27.02.2019 and read out the relevant para 3 to 5 of the said judgement (supra).

4. On hearing both the sides and considering the above binding judgement in the case of M/s. Dodson Lindblom Hydro Power Pvt. Ltd. (supra), we find relevant to extract the operational para 3 to 5 of the said judgement (supra) and the same are as under :-

“3 *Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007-2008. Revenue has urged the following questions for our consideration :-*

(i) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?*

(ii) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?*

4 *Though two questions are framed, singular issue is whether the receipts of the Assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore not liable to tax. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of Commissioner of Income Tax v/s. My Home Power Ltd reported in (2014) 365 ITR 82 (AP) holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of Commissioner of Income Tax v/s. Subhash Kabini Power Corporation Ltd. reported in (2016) 385 ITR 592 (Karn) and followed by lgc 2 of 3 (16) itxa-1820.16ors.doc Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of Principal Commissioner of Income Tax v/s. L Sugar Factory Pvt. Ltd reported in (2017) 392 ITR 568 (All)).*

5 *In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence not entertained. The Income Tax Appeals are dismissed.”*

5. Considering the above binding judgement (supra) as well as the decision of the Co-ordinate Bench of the Tribunal in the case of M/s. Dodson Lindblom Hydro Power Pvt. Ltd. (supra), we find the issue stands covered and decided in favour of the assessee. Following the parity of reasoning, we are of the opinion that the said carbon credits is outside the scope of the chargeability of tax as the same constitutes “capital receipts”. Thus, the ground nos.1 to 4 are allowed in favour of the assessee.

6. Considering the relief granted to the assessee, the adjudication of ground no.5 becomes academic exercise only. Thus, the ground no.5 is dismissed as academic.

7. Ground no.6 is general in nature and the same is dismissed as such.
8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 19th day of November, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(D. KARUNAKARA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 19th November, 2019

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr. CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.