

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1412/Bang/2019
(Assessment Year: 2014-15)

Asst. Commissioner of Income Tax,
Circle 3(1), Hubli.

....Appellant

Vs.

M/s. VRL Logistics Ltd.,
Varur, Post Chabbi, Hubli-581 207

.....Respondent.

Assessee By:	Smt. Sheetal Borkar, Advocate.
Revenue By:	Ms. Neera Malhotra, CIT (D.R)

Date of Hearing :	04.03.2020
Date of Pronouncement :	11.03.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The revenue has filed an appeal against the order of Commissioner of Income Tax (Appeals)-12, Hubli passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act').

2. The revenue has raised the following grounds of appeal :

1. Whether, on the facts and in the circumstances of the case and in law, the CIT(A) Hubballi, was justified in holding that the sum of Rs. 6,08,73,000/- received by the assessee-company, on the sale of Certified Emission Reduction (CER) or Carbon Credits is a capital receipt, ignoring the fact that the assessee company itself has shown the said amount as a revenue receipt, under the head 'Profits and gains of business or profession', having credited the said amount in its P&L account under the head, 'Revenue from operations' and sub-head, 'Sale of goods'.
2. Whether, on the facts and in the circumstances of the case and in law, the CIT(A) Hubballi, was justified in treating the receipts from sale of CERs as capital receipt, not exigible to tax as revenue receipts, without appreciating the fact that such income from Carbon Credits is admittedly a benefit arising out of the business of the assessee, and would fall within the definition of "Income" u/s. 2(24)(vd) read with section 28(iv) of the Act, as clearly discussed / held while deciding on identical set of facts, by the Hon'ble Cochin bench of ITAT in the case of Apollo Tyres vs ACIT Cir -1(1) Kochi (47 taxmann.com 416) order dated 07/03/2014.
3. Whether, on the facts and in the circumstances of the case and in law, the CIT(A) Hubballi, has failed to appreciate that the income on the sale of CERs is "attributable to" the business of the assessee, but is not the direct source of income from the industrial undertaking of the assessee and thus, cannot be treated as profit "derived from" the industrial undertaking. Thereby, the assessee is not entitled for claim of deduction u/s. 80-IA of the Act in respect of sale of CERs. Identical issue has been clearly analysed / discussed by the Hon'ble Cochin bench of ITAT in the case of Apollo Tyres vs ACIT Cir -1(1) Kochi (47 taxmann.com 416) order dated 07/03/2014.
4. Whether, on the facts and in the circumstances of the case and in law, the CIT(A) Hubballi, was correct in placing reliance on the decision of the jurisdictional High Court in the case of CIT vs Subash Kabini Power Corporation Ltd (2016) 385 ITR 592 (Kar.) which in turn has relied on the order of ITAT, Hyderabad in the case of My Home Power vs DCIT, Central Circle-7, Hyderabad in ITA No 1114/Hyd/2009 dt 02.11.2012, upheld by the Hon'ble Andhra Pradesh High Court in ITA No 60 of 2014 dt 19.02.2014. The said decision of AP High Court has not been accepted by the Department and SLP has been filed against the same in the Supreme Court (Diary No 21389/2014, Respondents being M/s. My Home Power Ltd & M/s Shree Cements Ltd.).

3. The Brief facts of the case are. the assessee company is engaged in the business of transportation of goods, courier service, passenger travel and wind power generation of electricity and filed the return of income for the Assessment Year 2014-15 on 26.09.2014. Subsequently, Revised Return was filed declaring

total income of Rs.40,41,69,090/-,and the case was selected for scrutiny, and Notice under Section 143(2) and 142(1) of the Act were issued. In compliance, the learned Authorized Representative appeared from time to time and the case was discussed Whereas,the assessing officer find that the assessee has claimed deduction under Section 80IA of the Act and verified the Audit Report in respect of deduction. But,the Assessing Officer has denied the deduction under Section 80IA of the Act on the Carbon Credit receipts and passed the order under Section 143(3) of the Act dt.30.12.2016. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). Whereas, the CIT(Appeals) considering the grounds of appeal, findings of the Assessing Officer and submissions of the assessee, relying on the decision of co-ordinate bench of the Tribunal in assessee own case (ITA No.2783/Bang/2017 Dt.5.9.2018) has granted relief and allowed the appeal of the assessee.Aggrieved by the order of CIT(Appeals), the revenue has filed appeal before the Tribunal.

4. At the time of hearing, the ld. DR submitted that the CIT (Appeals) has erred in granting relief irrespective of the fact that the decision relied on by the CIT (Appeals) has been challenged at higher forums by the revenue. Whereas the learned Authorized Representative supported the orders of the CIT(Appeals) relying on the assessee own case for the A.Y. 2013-14.We found the Ld

CIT(Appeals) has dealt on the disputed issue at page 3 paras 5 & 6 of the order and granted relief which is read as under :

5. The ITAT, 'B' bench, Bengaluru, in order Dt.05.09.2018, for A.Y.2013-14, in I.T.A. No.2783/Bang/2017, in the case of VRL Logistics Ltd. Vs. ACIT, had relied upon order of the ITAT 'B' bench, Bengaluru in the case of M/s.Ambuthirtha Power P. Ltd., Dt.06.07.2018, and the order of the hon'ble Karnataka High Court, in the case of CIT Vs *Subash Kabini Power Corporation Ltd.* (supra), wherein it was held that “*when the carbon credit is generated out of environmental concerns, and it is not having the character of trading activity, the Tribunal has rightly held that it is rightly held that it is capital receipt and it is not income out of business and hence, not liable to pay income tax.*”, to hold that receipts on sale of carbon credits is capital in nature and not exigible to tax as revenue receipts. The ITAT also held that there was therefore no merit in the alternative ground of the assessee that deduction U/s.80IA is allowable on such carbon credits receipts.

6. Respectfully following the decision of the ITAT, 'B' Bench, Bengaluru, vide order Dt.05.09.2018, in the assessee's own case for A.Y.2013-14, while relying on the order of the hon'ble Karnataka High Court in the case of CIT Vs. *Subash Kabini Power Corporation Ltd.* and decision of the co-ordinate bench of ITAT, 'B' Bench, Bengaluru, in the case of M/s.Ambuthirtha Power P. Ltd., I, hold that the carbon credit receipts are capital receipts, and there is no merit in the alternative ground submitted by the assessee that deduction U/s.80IA is allowable on such receipts.

5. The learned Departmental Representative could not controvert the observations of the CIT(Appeals) with any new or cogent material. Accordingly, we are not inclined to interfere with the order of CIT(Appeals) and uphold the same and dismissed the grounds of appeal of revenue.

6. In the result, the Revenue's appeal is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 11.03.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore