

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.2452/Del/2016
(ASSESSMENT YEAR-2011-12)**

M/s ECO RRB Infra Pvt. Ltd. 2-C & D, 2 nd Floor, M-6, Uppal Plaza Distt. Centre, Jasosla, New Delhi-110025 PAN -AAACR 0233R (Appellant)	Vs.	Dy. CIT, Circle-11(1), New Delhi. (Respondent)
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Appellant By	Sh. V. Raja Kumar, Adv.
Respondent by	Sh. S.N. Meena, Sr. DR

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal has been preferred by the assessee against order dated 23.02.2016 passed by the learned Commissioner of Income Tax (Appeals)-3, New Delhi {CIT (A)} for Assessment Year 2011-12.

2.0 The brief facts of the case are that the assessee company is engaged in the business of rendering technical consultancy and professional services relating to wind power generation. The return of income was filed declaring an income of Rs.2,85,18,286/-. The

return of income was revised subsequently for the reason that the brought forward losses and unabsorbed depreciation was not adjusted. The case was selected for scrutiny and during the course of assessment proceedings, it was observed that the assessee has claimed deduction u/s 80IA of the Income Tax Act, 1961 (hereinafter called 'the Act') amounting to Rs.46,99,020/-. The assessee was asked to substantiate its claim for deduction u/s 80IA. The assessee submitted before the Assessing Officer (AO) that it derived income by carrying on consultancy in renewable and non conventional source i.e., wind energy and, thus, earned commission on sale of wind electric generation (WEGs). It was also submitted that the other source of income was from the wind electricity generators installed by the assessee. It was the assessee's claim before the Assessing Officer that setting up of new wind electric generation unit in any part of India for the purposes of power generation fully met with the intention of the law makers of promoting investment in power projects and was, thus, eligible for claim of deduction u/s 80IA of the Act. However, the Assessing Officer was of the view that the assessee has not derived income from the sale of wind electricity

generators but from commission on sale of wind electric generation unit from its principal. The Assessing Officer also observed that as per the assessee's own submissions, the power plant had been set up as a demonstration unit to convince the prospective buyers for purchasing wind electric generation units and, therefore, the assessee's claim was not eligible for deduction u/s 80IA of the Act. The AO also noted that no expenditure had been debited towards power generation unit by the assessee and, therefore, the correct profit position was not being reported. The AO proceeded to disallow the claim of deduction of Rs.46,99,020/-.

2.1 Apart from this, the Assessing Officer also disallowed depreciation on wind electricity generators and made an addition of Rs.1,15,89,549/- on this account. The Assessing Officer also made addition on account of depreciation of land amounting to Rs.1,843/- disallowance out of repairs and maintenance amounting to Rs.3,72,968/- and disallowance u/s 14A of the Act amounting to Rs.77,574/-. The assessment was completed at an income of Rs.2,23,25,989/- after giving the benefit of set off of brought forward losses.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority who partly allowed the assessee's appeal by holding that in view of his predecessor's decision in Assessment Year 2009-10, the assessee's claim of u/s 80IA of the Act and depreciation on wind electricity generators was not allowable. Similarly, with respect to depreciation on land, the finding of his predecessor in assessee's appeal for Assessment Year 2009-10 was again followed and this ground was also rejected. The Ld. CIT (A) also sustained the disallowance of expenditure pertaining to repairs and maintenance. However, the disallowance u/s 14A of the Act was deleted.

2.3 Aggrieved, the assessee is now before this Tribunal and has challenged the action of the Ld. CIT (A) by raising the following grounds of appeal:

“On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in confirming the following action of the Assessing officer:

- 1. Rejecting claim u/s 80IA of the Act;*
- 2. Making addition of Rs.1,15,89,549/- being the amount of depreciation on Wind electricity Generators used for the purpose of business.*

3. *Not providing depreciation on land as claimed.*
 4. *Making an addition of Rs.3,72,968/- on account of expenses incurred on repairs and maintenance.*
- The order being arbitrary, misconceived, erroneous and untenable must be quashed with directions for appropriate relief.”*

3.0 At the outset, the Ld. Authorized Representative submitted that all the grounds raised in the appeal were covered by earlier orders of the Tribunal in assessee's own case. Copies of the orders of the ITAT for Assessment Years 2006-07, 2012-13, 2013-14, 2014-15 and 2015-16 were placed on record. The Ld. AR submitted that all the issues raised in this appeal have been decided either in favour of the assessee or against the assessee and therefore, were accordingly covered.

4.0 Per contra, the Ld. SR. DR fairly conceded that all these issues are covered by the order of the Tribunal for earlier years.

5.0 We have gone through the records and also perused the orders of the Tribunal in assessee's own case. It is seen that in ITA No.400/Del/2011 and ITA No.6149/Del/2012 for Assessment Years 2006-07 and 2007-08, the Co-ordinate Bench of this Tribunal vide order dated 27.09.2013 has observed that an identical question had

arisen in the case of RRB Consultancy reported in [2007] 112 TTJ 794 (Del) wherein it was observed that *“where the assessee’s main activity was consultancy in the field of wind mill energy and wind mills were also used for generation of electricity, expenditure incurred by the assessee on repair and maintenance of wind mill energy generation and insurance expenses was allowable and was not to be deducted from the income from generation while allowing deduction u/s 80IA”* .

5.1 In Assessment Year 2008-09, vide order dated 11.05.2012 in ITA No.2100/Del/2011, in appeal preferred by the Revenue, the Co-ordinate Bench of this Tribunal considered the orders for earlier years, namely Assessment Years 2000-01 and 2002-03 and reached a conclusion that deduction u/s 80IA of the Act is to be computed after setting off of depreciation relatable to wind mills against the income earned from electricity generators which qualified for deduction u/s 80IA of the Act. In the assessee’s appeal for the same year, the Tribunal recorded that the appeals against the order of the Tribunal were pending before the Hon’ble Delhi High Court and, therefore, remanded the matter to the file of the Assessing Officer to

take a view after the Hon'ble High Court adjudicates the issue so as to avoid multiplicity of proceedings.

5.2 For Assessment Year 2008-09, in ITA No.700/Del/2013 vide order dated 16.10.2014 and for Assessment Year 2009-10 in ITA No.701/Del/2013 vide order dated 16.10.2014, the Tribunal followed the view taken by the Tribunal in assessee's appeals for Assessment Years 2006-07 & 2007-08 and remanded the matter to the file of the Assessing Officer to adjudicate the issue afresh in light of the judgment of the Hon'ble Delhi High Court.

5.3 Similarly, remand was done by the Tribunal in Assessment Year 2012-13 in ITA No.4633/Del/2017 wherein vide order dated 06.01.2020 the issues were restored to the file of the Assessing Officer.

5.4 Therefore, in view of the factual matrix of the case, we are of the considered opinion that it would be just and proper to remand this appeal also to the file of the Assessing Officer to adjudicate the issues in hand afresh in tune with the directions in ITA No.400/Del/2011, 6149/Del/2012, 700/Del/2013, 701/Del/2013. Thus, grounds Nos. 1 & 2 are allowed for statistical purposes.

5.5 Coming to ground No.3 challenging the denial of depreciation on lands, it is seen that this issue is no longer *res integra* and it is settled law that depreciation on land cannot be allowed. Even the ITAT in assessee's own case for Assessment Years 2006-07 and 2007-08 in ITA No.400/Del/2011 and 6149/Del/2012 vide order dated 27.09.2013 has held that depreciation on land is not allowable. Accordingly, the finding of the Ld. CIT (A) in disallowing depreciation on land is upheld and ground No.3 of the appeal is dismissed.

6.0 In the final result, the appeal of assessee is partly allowed.

Order pronounced in the Open Court on 22/06/2020.

Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 22/06/2020

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI