

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 1895/MUM/2019 : A.Y : 2009-10

M/s. Veritas (India) Ltd.
701, Embassy Centre, Nariman Point,
Mumbai 400 021.
PAN : AAACD1654J (Appellant)

Vs. Asst. Commissioner of Income
Tax, Circle – 3(3)(2),
Mumbai. (Respondent)

Appellant by : Shri Gaurav Kabra
Respondent by : Smt. Usha Gaikwad

Date of Hearing : 04/01/2021
Date of Pronouncement : 11/01/2021

ORDER

PER RAJESH KUMAR, AM

The only issue raised by the assessee in this appeal is against the order of Commissioner of Income Tax (Appeals) (in short 'the CIT(A)') whereby CIT(A) has confirmed the action of the Assessing Officer in disallowing depreciation of Rs.8,75,000/- claimed by the assessee @ 80% on civil and electrical works for erection and commissioning of Windmills without considering the facts and circumstances of the case.

2. The facts in brief are that in the course of set aside assessment proceedings which was taken up by the Assessing Officer pursuant to the direction of the learned Principal Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 (in short 'the Act'), the Assessing Officer was

to examine the claim of depreciation on civil and electrical items under the block 'Windmills' @ 80% by the assessee. According to the Assessing Officer, depreciation was admissible at 10% and not 80% as claimed by the assessee as the expenditure by way of civil and electrical works is not integral part of the windmill. Accordingly, the Assessing Officer reduced the depreciation to the extent of Rs.8,75,000/- in assessment framed under Section 143(3) r.w.s. 263 of the Act vide order dated 28.01.2015. In the appellate proceedings, the learned CIT(A) dismissed the appeal of the assessee by observing and holding as under:-

"4.3 I have considered the submissions carefully. It is noted that in the order u/s 263 dated 10.03.2014 the erstwhile Ld CIT-3 Mumbai has held that there would be some labour and civil works involved in installing a windmill but that does not mean that same will also be entitled to higher rate of depreciation @ 80%. It appears that the appellant has accepted this decision in the order u/s 263. The assessing officer has passed the order accordingly. Even otherwise, civil works and routine electrical wiring and cabling is not an integral part of Windmill and thus not entitled to higher rate of depreciation. The ground of appeal no. 1 is therefore dismissed."

3. After hearing the rival parties and perusing the material on record, we observe that in this case the assessee has capitalised the labour and electrical expenditure under the head 'Windmills' which were incurred for installation of windmills. According to the Assessing Officer, the assessee is not entitled to depreciation @ 80% and accordingly, he reduced the depreciation to 10% which has resulted in to disallowance of Rs.8,75,000/-. In the appellate proceedings also, the learned CIT(A) dismissed the appeal of the assessee by holding that labour and civil works including electrical items do not constitute part of block 'Windmills' and dismissed the appeal of the assessee. We have examined the facts of the case and also various decisions relied by the learned

representative of the assessee in the course of hearing. We are of the opinion that even the labour and electrical items required to install windmills would be eligible for depreciation @ 80% as the expenses are essential for installation of windmill. In the case of *CIT vs Mehru Electricals & Mechanical Engineers (P.) Ltd.*, [2016] 388 ITR 169, the Hon'ble Rajasthan High Court has held that civil and electrical generators are to be taken as part of the windmill and the rate of depreciation applicable would be that of the windmill. Similar ratio has been laid down by the co-ordinate bench of the Tribunal in the case of *Poonawala Finvest & Agro (P.) Ltd. vs ACIT*, [2009] 27 SOT 47 (Pune) (URO) wherein the co-ordinate bench has held that the expenses incurred on the installation of windmill in the nature of civil works and transformer upto the DP structure constituted part of the windmill block and are eligible to the same rate of depreciation as that of the windmill. Keeping in view the ratio laid down by the Hon'ble Rajasthan High Court and the co-ordinate bench of the Tribunal, we are inclined to set-aside the order of the learned CIT(A) and direct him to allow depreciation @ 80%. Consequently, the disallowance of Rs.8,75,000/- is ordered to be deleted.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th January, 2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 11th January, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai