

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.509/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2009-10)

The Assistant Commissioner of Income Tax, Corporate Circle-3(2), Chennai-34.	Vs	M/s.Wescare (India) Ltd. Now amalgamated with M/s.Vaata Smart Ltd. 7, 11 th Avenue, Ashok Nagar Chennai-600 083.
		PAN: AADCC 3678E
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Bharath, CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. I.Dinesh, Advocate

सुनवाईकीतारीख/Date of hearing	:	23.03.2021
घोषणाकीतारीख /Date of Pronouncement	:	12 .04.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order of the learned CIT(A)-11, Chennai dated 30.11.2016 and pertains to assessment year 2009-10.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The Id.CIT(A) erred in allowing the assessee's claim of treating the receipt on sale of carbon credit as Capital Receipt though the same is a revenue receipt.

2.2 The Id.CIT(A) ought to have considered the following facts while deciding the issue.

(i) It is a compensation for incurring extra cost in using alternate fuel.

(ii) It is not awarded for impairment or destruction of any capital structure or source of income of the assessee.

(iii) It is a benefit given to the industry for carrying out business by using alternate fuel.

(iv) It should be taxable as revenue receipt under section 28(iv).

(v) The entitlement to Certified Emission Reduction is akin to import entitlements whose sale proceeds are taxable as revenue receipts and they are also tradable in Stock Exchange.

2.3 It is submitted that the decision of the Honble High Court of Andhra Pradesh relied on by the CIT(A) in the case of MIs. My Home Power Limited (365 ITR 82) is not accepted by the Department and SLP filed in this case and other group cases are pending before the Hon'ble Supreme Court.

3. For these and other grounds that may be adduced at the time of bearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer restored."

3. We find that appeal filed by the Revenue is barred by limitation of 7 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The learned DR submitted that there was a delay in getting approval for filing appeal, the Department could not file appeal within the time

allowed under the Act, therefore delay may be condoned. Having heard both sides and considered the petition filed by the Revenue for condonation of delay, we are of the considered view that reasons given by department for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the Revenue is admitted for adjudication.

4. Brief facts of the case are that the assessee company is engaged in the business of power generation through non-conventional sources i.e., windmills, filed its return of income for the assessment year 2009-10 on 07.10.2009 admitting Nil income. The assessment for the impugned assessment year has been completed u/s.143(3) of the Act on 30.12.2011 by determining total income at ₹ 24,10,36,209/- by making various additions including additions towards difference in sale of WTGs, interest on debentures not paid, lease deposit written off of sundry debtors, cessation of liability towards sundry

creditors and interest payable to OBC disallowed u/s.43B of the Act.

5. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT(A), the assessee has also filed additional ground of appeal challenging exclusion of CERs (carbon credit) from taxation on the ground that sale of CERs is capital receipt and not liable for taxation. The learned CIT(A), for the detailed reasons recorded in his appellate order, allowed additional ground filed by the assessee and directed the Assessing Officer to treat sale of carbon credit as capital receipt and not liable to tax. The relevant findings of the learned CIT(A) are as under:-

“10. Additional ground: Treatment of sale of CERs carbon credit) as capital receipt and not liable for taxation,

10.1 Appellant's submissions before the CIT(A):

During appeal proceeding, the appellant has made the following submission with regard to the additional ground raised:

‘The Petitioner filed its return of income for this Assessment Year on 07.10.2009. In the Profit & Loss A/c other income of ₹ 38,66,83,978/- had been credited. In the course of the assessment proceedings, the Assessing Officer called for details of this vide his letter dated 11.10.2011 (Page 53 of Additional Paper Book). The assessee, vide its reply dated

27.10.2011 (Page 54 of Additional Paper Book), submitted the details. Comprised therein is a sum of Rs. 14,10,48,426/- being the realisation of sale of CERs.

2. The Petitioner has now been advised that the CERs (carbon credit) is a capital receipt and is not liable for taxation. The Petitioner has also been advised that the Income Tax Appellate Tribunal, Chennai, in the case of *Ambiko Cotton Mills Vs. ACIT (61 SOT 31]* and also the Andhra Pradesh High Court in case of *CIT Vs. My Home Power (315 ITR 82)* have upheld the claim. The Petitioner hence begs to submit the following additional Grounds of Appeal. The Petitioner further submits that no fresh investigation is required and the additional ground raised is purely a legal issue. The Petitioner hence prays that the Learned Commissioner of Income Tax (Appeals) be pleased to admit the Additional Ground and thus render justice.”

10.2 CIT(A)'s remarks and decision:

The appellant has made a fresh claim through an additional ground as mentioned above. In view of the decision of apex court in the case of *Goetze India Ltd. (2006) 284 ITR 323 (SC)* and of Hon'ble High Court of Madras in the case of *Ramco Cements (2015) 373 ITR 146 (Mad)*, wherein it is held that the Appellate Authority can entertain a fresh claim, which was not made in the original return of income, the appellant's additional ground is taken up for adjudication.

10.2.1 The appellant has claimed that the sale of CERs (carbon credit) is a capital receipt and is not liable for taxation by relying on the decisions as mentioned above under para 10.1. In the cases relied on by the appellant as mentioned above, it is clearly held that the sale proceed of carbon credit is a capital receipt and is not liable for taxation. The relevant portion of the above case laws are reproduced hereunder:

a) *Ambiko Cotton Mills Vs. ACIT 161 SOT 31)*

Section 4 of the Income-tax Act, 1961 - Income - Chargeable as capital receipt or revenue receipt] - Assessment year 2009-10 - Whether receipts on account of sale of carbon credits is to be considered as capital receipt - Held, yes (Para 13] -In favour of assessee.

b) CIT Vs. My Home Power 365 ITR 82)

Section 28(i) of the Income-tax Act, 1961 - Business income - Chargeable as (Carbon credits) - Assessment year 2007-08 – Assessee company was engaged in business of power generation through biomass power generation unit - It received carbon credits, namely, carbon Emission Reduction Certificates for its project activity of switching off fossil, fuel from naphtha and diesel to biomass - It transferred said carbon credits and offered receipt from said transfer as capital receipt - However, Assessing Officer treated the said receipt as business income and brought the same to tax - Tribunal held that carbon credit not being an offshoot of business but an offshoot of environmental concern amount received on their transfer had no element of profit or gain - Whether since carbon credit was not even inked with power generation Tribunal was justified in its decision- Held, yes [Para 2] In favour of assessee.

10.2.2. In view of the above decisions which are directly on the point in favour of assessee, the appellants ground on this issue is allowed.”

6. The learned DR submitted that the learned CIT(A) has erred in allowing the claim of the assessee regarding treatment of sale of carbon credit as capital receipt, without appreciating the fact that it is a compensation for incurring extra cost in using alternate fuel and further, it is a benefit given to the industry for carrying out business by using alternate fuel. The DR further submitted that entitlement to certify emission

reduction is akin to import entitlements, whose sale proceeds are taxable as revenue receipts and they are also tradable in stock exchange. Therefore, the learned CIT(A) has grossly erred in directing the Assessing Officer to treat sale of carbon credit as capital receipt by following the decision of the Hon'ble High Court of Andhra Pradesh in the case of M/s. My Home Power Ltd. (365 ITR 82), ignoring the fact that Department has not accepted the decision of the Hon'ble High Court of Andhra Pradesh and filed SLP before the Hon'ble Supreme Court, which is pending for consideration.

7. The learned AR for the assessee, on the other hand, submitted that the issue is squarely covered in favour of the assessee by the decision of Hon'ble High Court of Madras in the case of M/s. S.P. Spinning Mills Pvt.Ltd. Vs. ACIT in T.C.A No.451 of 2018 vide order dated 19.01.2021, where the Hon'ble High Court held that receipt by way of sale of carbon credit has been held to be capital receipt and not liable for taxation.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities

below. We find that the learned CIT(A) has allowed claim of the assessee for exclusion of receipt from sale of CERs (carbon credit) as capital receipt by following the decision of the Hon'ble High Court of Andhra Pradesh in the case of M/s. My Home Power Ltd. (supra), where the Hon'ble High Court held that carbon credit not being an offshoot of business, but an offshoot of environmental concern, amount received on transfer had no element of profit or gain. The Hon'ble Jurisdictional High Court of Madras in the case of Ambika Cotton Mills Vs ACIT (61 SOT 31) had considered an identical issue and held that sale of carbon credit is to be considered as capital receipt. The Hon'ble High Court of Madras in the case of M/s. S.P. Spinning Mills Pvt.Ltd. Vs. ACIT (supra) had once again reiterated its earlier findings in the case of Ambika Cotton Mills Vs ACIT (supra) and held that receipt by way of sale of carbon credit will not fall within the definition of total income and the same cannot be included u/s. 80IA of the Act. The sum and substance of ratios of the Hon'ble High Courts are that receipt by way of sale of carbon credit is a capital receipt and cannot be included in taxable income. The learned CIT(A) after

considering relevant facts and also by following certain judicial precedents has rightly directed the Assessing Officer to treat sale of carbon credit as capital receipt and not liable for tax. Hence, we are inclined to uphold the findings of learned CIT(A) and dismiss the appeal filed by Revenue.

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12th April, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 12th April, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.