

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH.KULDIP SINGH, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.6696/Del/2015
Assessment Year: 2006-07

ACIT Central Circle -15, Room No.353, E-2, ARA Centre, Jhandewalan Extn New Delhi	Vs	Nav Bharat International Ltd., 5192, Lahori Gate Naya Bazar, New Delhi PAN No.AABCN9065G
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. H. K. Choudhary, CIT DR
Respondent by	Sh. Satish Agarwal, CA

Date of hearing:	23/06/2021
Date of Pronouncement:	23/06/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-42, New Delhi dated 17.08.2015 pertaining to A.Y. 2006-07.

2. Though the revenue has raised as many as nine grounds but the sum and substance of the grievance of the revenue is that the CIT(A) erred in allowing depreciation of Rs.3.04 crores claimed on wind power generation plant.

3. Assessee is a company engaged in the business of processing and export of rice and during the year under consideration the assessee also entered into the business of wind power generation.

4. The assessee filed its return of income declaring income of Rs.1.45 crores which was assessed at Rs.1.49 crores vide order dated 16.04.2008 framed u/s. 143 (3) of the Act.

5. Subsequently vide order dated 03.03.2011 the PCIT assuming jurisdiction u/s.263 of the Act set aside the assessment with a direction to the AO to frame the assessment afresh after verification of genuineness of the claim of the depreciation on wind power plant.

6. Pursuant to the direction of the PCIT the AO framed impugned assessment by making the disallowance of depreciation of Rs.3.04 crores.

7. Assessment was assailed before the CIT(A) and after verification of the facts the CIT(A) allowed the claim of depreciation.

8. Before us the DR strongly supported the findings of the AO.

9. It is the say of the DR that the wind mill plant was not commissioned during the year under consideration and, therefore, the assessee is not eligible for the claim of depreciation and the AO has rightly disallowed the claim of depreciation.

10. Per contra the counsel for the assessee reiterated what was stated before the first appellate authority and relied upon the decision of the FAA.

11. We have given a thoughtful consideration to the orders of the authorities below. We find that the AO has disallowed the depreciation on the wind power generation plant mainly for the following reasons :-

“(i) The plant could not have been set up by 31.03.2006, in view of the fact that the seller M/s Sulzon Energy Ltd. (SEL) had issued the sale bill on 29.03.2006 and there was no evidence in the form of required lorry receipts, which could confirm transportation of the said plant during the year.

(ii) The agreement for supply of power in the form of Power Purchase Agreement with the public sector undertaking,

namely M/s BESCO dated 28.03.2006 was antedated as the approval from Karnataka Electricity Regulatory Commission was accorded on 24.05.2006, which was recorded on the said agreement. In this regard, AO preferred to conduct enquiry directly with the Chief Secretary, the Government of Karnataka by writing a letter dated 09.12.2011, which was not replied to by the latter till the date of passing of the impugned order. On this aspect, my Id. predecessor, CIT(A)-4, New Delhi, vide several letters directed the AO to furnish his remand report, however, till date in the absence of the comments of the Chief Secretary, Government of Karnataka, no such reply was filed. (iii) The auditor in the audit report did not mention about the business of wind power generation nor any depreciation on the wind power generation plant was claimed under the Companies 1956.”

12. We have gone through the power purchase agreement with Bangalore Electricity Supply Company Limited and the same is placed at pages 9 to 34 of the paper book.

13. The wind power generation plant had been dispatched vide challans for which lorry receipts from 10.03.2016 to 23.03.2006 can be understood from the following chart :-

NAV BHARAT INTERNATIONAL LTD 5192, Naya Bazar, Delhi-6						
S. NO	Date	L R No	Lorry No	Delivery Challan No	Date	Name of the Transporter
1	10.03.2006	7328	TN04M9609	7545155272	10.03.2006	Sri Kamakshi Transport Surat Goods Transport Private Ltd
2	11.03.2006	88369	TN31F7198	7545155280	11.03.2006	
3	14.03.2006	8502	GJ1UU6082	7545155374	14.03.2006	Katana Automobiles Ltd
4	16.03.2006	1010061	HR38MG309	7545155449	16.03.2006	Katana Transport Serv
5	23.03.2006	8272	GJ1UU6081	7544154948	23.03.2006	Katana Automobiles Ltd

14. The invoices were raised by M/s Sulzon Energy Ltd. on different dates for sale of wind power generation plant the copies of the invoices are placed at pages 49 to 57 of the paper book.

15. The details of which are summarised as under :-

NAV BHARAT INTERNATIONAL LTD
ASSESSMENT YEAR 2006-07

DETAIL OF ADDITION IN WIND POWER

S.No	Date	Debit Note/Invo Ice No	Particular of Item	Amount	Page No
1	28/02/2006	27	TRANSFER FEES	100000.00	50
2	31/03/2006	43	Labour Charges	110200.00	51
3	15/03/2006	41	Labour Charges	1542800.00	54
4	15/03/2006	34	Civil Construction Work	3608331.00	53
5	31/03/2006	27	INFRASTRUCTURE	3500000.00	54
6	15/03/2006	41	HT ELECTRICAL YARD VCB, HT TRANSMISSION LINE	3092324.00	55
7	29/03/2006	423	1.25 MWS66 TT 54 M HT SCS : NACELLE, HUB AND SET OF 3 BLADES ,	43800000.00	56
8	27/03/2006	343	TUBULAR 54M	5200000.00	57
Total				60953655.00	

16. M/s. Suzlon Energy Ltd. has clarified that the wind power generation plant was dispatched and installed at the site before 30.03.2006 and the copy of the clarified is at pages 47 and 48 of the paper book.

17. The wind power generation plant was commissioned on 31.03.2006 as per copy of commissioning certificate issued by Karnataka Power Transmission Corporation Limited. The said commissioning certificate is as under :-

KARNATAKA POWER TRANSMISSION CORPORATION LIMITED


No: GDG/EEE/TL & SS/AE (O)/F-25/06-07/177-190

Office of the
Executive Engineer (Ele),
TL & SS Division, KPTCL,
GADAG.

Date: 5.4.06

COMMISSIONING CERTIFICATE

This is to certify that 01 No. (Loc. No K-243)-X-1.25 MW Wind Energy converters with associated electrical equipments interconnecting the wind farm with KPTCL grid 110/33/11KV Substation at DAMBAL by 110KV D/C lines of M/s NAV BHARAT INTERNATIONAL LTD. at Kappathgudda, Gadag (Dist), Karnataka has been commissioned on 31.03.2006. Bearing R.R. No:Gdg/TL&SS/WE/NBILH/K-243/19 as per the interconnecting approval accorded by the Chief Eng. Ele. (P&C), KPTCL, Bangalore vide letter No: GEE (P&C)/SEE (PLG)/EEE (PSS)/AEE-1/CYS-230 Dt. 24.03.2006. And as per approval of the electrical installation accorded by the Chief Electrical Inspectorate to the Government of Karnataka vide letter No: CEIG/DEI-1/33440-45/2005-06 Dt. 25.03.2006.


 Executive Engineer (Ele),
TL & SS Division, KPTCL, Gadag.

To
M/s NAV BHARAT INTERNATIONAL LTD.

Copy submitted for kind information to:

1. The Chief Engineer (Ele), (P&C), KPTCL, Kaveri Bhavan, Bangalore.
2. The Chief Engineer (Ele), LDC, KPTCL, AR circle, Bangalore.
3. The Chief Engineer (Elcty), Transmission Zone, KPTCL, Bagalkote.
4. The Supt. Engineer (Ele), Tr (W & M) Circle, KPTCL, Hubli.
5. The Supt. Engineer (Ele), RT, KPTCL, KR Circle, Bangalore.
6. The Supt. Engineer (Ele), RT Circle, KPTCL, Hubli.
7. The Executive Engineer (Ele), Major Works Division, KPTCL, Gadag.
8. The Executive Engineer (Ele) RT Division, Hubli.
9. Copy to AEE TLM/MF/OC.

18. Considering the aforestated clinching evidences there remain no doubt that the wind power generation plant was commissioned during the financial year under consideration and, therefore, the assessee is very much eligible for claim of depreciation which has been rightly allowed by the CIT(A). We, therefore, do not find any error in the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

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

20. Decision announced in the open court in the presence of both the representatives on 23.06.2021.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 23.06.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23.06.2021
Date on which the typed draft is placed before the dictating Member	23.06.2021
Date on which the typed draft is placed before the Other member	23.06.2021
Date on which the approved draft comes to the Sr.PS/PS	23.06.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	23.06.2021
Date on which the fair order comes back to the Sr. PS/ PS	23.06.2021
Date on which the final order is uploaded on the website of ITAT	23.06.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	