

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 256/JP/2019
निर्धारण वर्ष/Assessment Years : 2010-11

M/s Compucom Software Limited, IT 14-15, RIICO Industrial Area, Sitapura, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Circle- VI, Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG5818P		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by: Shri Rohan Sogani (CA) &
Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (CIT)

सुनवाई की तारीख / Date of Hearing : 31/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 29/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 26.12.2018 wherein the assessee has raised the following grounds of appeal:

"1. *In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in reopening the case u/s 147. The action of Id. CIT(A) is illegal, unjustified,*

arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO in disallowing the depreciation of Rs. 37,83,500/- on windmill. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance made by the Id. AO and confirmed by the Id. CIT(A).

3. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO, to the extent of disallowing amount of Rs. 68,876/- u/s 14A. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance made by the Id. AO and confirmed by the Id. CIT(A)."

2. In Ground No. 1, the assessee has challenged the reopening the assessment proceedings u/s 147 of the Act.

3. It was submitted by the Id AR that in this case, the original assessment u/s 143(3) was completed on 21.03.2013 and the notice u/s 148 has been issued on 31.03.2017 which is clearly beyond 4 years from end of the relevant assessment year. Therefore, proviso to section 147 is applicable. In the instant case, it was submitted that in the reasons so recorded, the Assessing Officer has not been able to establish any failure on the part of the assessee to fully and truly disclose all material facts except the fact that plant and machinery

certificate regarding installation and connection of windmill with the grid is not available with the department and further, electricity bill for the month of March was not provided by the assessee. In this regard, it was submitted that the assessee has capitalized a sum of Rs. 4.30 crores under block of assets "windmill" and has claimed depreciation thereon. It was submitted that the windmill was put to use as on 31.03.2010 and was on trial run till 22.04.2010 which was the commercial operation date and date of commencement of distribution of electricity from the windmill plant. It was submitted that during the course of original assessment proceedings, the assessee duly submitted a certificate of erection and commissioning issued by the Andhra Pradesh Power Distribution Corporation Ltd which is the State Government undertaking which shows that plant was erected and commissioned as on 31.03.2010 and was under trial run. It was accordingly submitted that since plant was put to use during the year as evidenced by the commissioning certificate and was capitalized in the block of assets, depreciation claim was rightly made by the assessee. It was accordingly submitted that there is no basis to hold that the certificate regarding installation and commissioning is not available on record or has not been submitted by the assessee and thus, there is no failure on part of the assessee to disclose truly and fully all material facts.

4. It was further submitted that matter regarding claim of depreciation on the windmill was duly examined by the Assessing Officer during the original assessment proceedings as evident from the contents of the assessment order wherein the Assessing Officer has

discussed the matter relating to claim of depreciation on the windmill purchased and installed during the year and has disallowed a part of such depreciation claim made by the assessee and our reference was drawn to the findings of the AO which read as under:

"5. *Disallowance on excess depreciation claimed on WTG:-*

The assessee purchased the wind mill during the year under consideration and claimed depreciation @80% on it. The depreciation claimed by the assessee is reproduced hereunder:-

Sr. No.	Particular	Amount	Depreciation Claimed	
			Rate of Depreciation	Depreciation
1	Supply of WEC	30000000	40%	120000000
2	Transportation expenses	1100000	40%	440000
3	Supply of windmill device-steel tower	5000000	40%	2000000
4	Supply of windmill device-Transformer	2300000	40%	920000
5	Development Rights**	1600000	40%	640000
6	Civil and industrial construction	1500000	5%	75000
7	Erection and commissioning	1500000	7.50%	112500

The revised calculation of depreciation which is to be allowed to the assessee is as under, as per the department stand in case of other assessee.

Sr. No.	Particulars	Amount	Depreciation Claimed		Depreciation should be claimed	
			Rate of Depreciation	Depreciation	Rate of Depreciation	Depreciation
1	Supply of WEC	30000000	40%	120000000	40%	12000000
2	Transportation expenses	1100000	40%	440000	40%	440000
3	Supply of windmill device- steel tower	5000000	40%	2000000	40%	2000000
4	Supply of windmill device- transformer	2300000	40%	920000	40%	920000
5	Development Rights**	1600000	40%	640000	2.50%	40000
6	Civil and industrial construction	1500000	5%	75000	5%	75000
7	Erection and commissioning	1500000	7.50%	112500	40%	600000

Here comes the difference of Rs. 1,12,500/- in form of excess depreciation claimed on windmill and even amount is being added back to the returned income of the assessee. Penalty u/s 271(1)(c) is being initiated separately for furnishing inaccurate particulars of the income."

5. It was submitted that complete information along with necessary evidence and explanation as required by the Assessing Officer was submitted during the original assessment proceedings. It was accordingly submitted that it is a case where on the basis of information already available on record which has been examined during the original assessment proceedings, the Assessing Officer has recorded the reasons that income has escaped assessment. It was submitted that there is no fresh information and/or evidence which has come to the knowledge or possession of the Assessing Officer to hold the belief that income has escaped assessment. It was submitted that it is a clear case of change of opinion on the part of the Assessing Officer which cannot be sustained in law as also held by the various authorities.

6. In support, reliance was placed on the order of Co-ordinate Bench decision in the case of ACIT vs. Mangalam Cement Ltd. (*ITA Nos. 82 & 681/JP/2014 dated 30th January, 2017*), which has since been affirmed by the Hon'ble Rajasthan High Court in case of PCIT vs Mangalam Cement Ltd (*D.B Appeal No. 211/2017 & 213/2017 dated 4.09.2017*), wherein it was held as under:-

"12.5 In the instant case, in the reasons recorded by the AO before issuance of notice u/s 148, it is stated that "the assessee has claimed and was allowed additional depreciation of Rs. 18,16,98,068/- u/s 32(1)(ia) on assets of power generating unit whereas the same is allowable only on P&M which falls under sec.32(1)(ii) whereas the assets of power generating unit are covered under sec. 32(1)(i)." In the instant case, the assessee

has claimed depreciation on power plant and windmill @ 80% on written down value basis under section 32(1)(ii) of the Act. The Assessing officer has not challenged such claim of depreciation under section 32(1)(ii) of the Act, however, on the same assets, the claim of additional depreciation under section 32(1)(iia) has now been challenged by issuance of notice u/s 148 of the Act. The basis of formation of belief by the AO that the assets falls under clause (i) and not clause (ii) and hence, claim of additional depreciation on such assets is not allowable, cannot therefore be accepted. More so, when the claim of depreciation on such assets under section 32(1)(ii) has been allowed by the Revenue in original assessment proceedings and also in the instant reassessment proceedings which are under challenge before us. There cannot be a situation where the additional claim of depreciation is disputed stating that the original claim of depreciation has been wrongly claimed but without disturbing (rather accepting) such original claim of depreciation. We are therefore of the considered view that the reasons recorded are self-contradictory and cannot form the basis to initiate reassessment proceedings. On this ground alone, the reopening of assessment u/s 147 cannot be held valid in law and is liable to be quashed.

12.6 Further, on review of the queries raised by the AO, it transpires that the same were related to examination of purchase of the assets during the year, the date on which they were first put to use, the production and sales in respect of the power plant

and windmill and whether the production has been commenced during the year or not. These queries were raised by the AO after going through the computation of income and depreciation chart submitted by the assessee company in respect of power plant as well as wind mill wherein the assessee has claimed depreciation @ 80% on written down value as well as additional depreciation @ 20% on actual costs available at APB 30-31. In our view, even though the query letter from AO didn't specifically mention about claim of additional depreciation and talks about depreciation claim, the queries raised by the AO were equally relevant for examining the claim of depreciation as well as additional depreciation and more so, when the same were originating from the same set of depreciation chart furnished by the assessee company. Thereafter, on review of submissions and related documentation filed by the assessee, the AO had allowed the assessee's claim of depreciation under section 32(1)(ii) and additional depreciation under section 32(1)(iia) of the Act during the course of original assessment proceedings under section 143(3) of the Act. Now, examining the said claim of additional depreciation during the reassessment proceedings would therefore be a clear case of change of opinion. On this ground as well, the reassessment proceedings cannot be held valid in law."

7. Reliance was also placed on the judgment of Hon'ble Rajasthan High Court in the case of CIT vs. Vaishali Avenue [2014] 48 taxmann.com 289 (Raj) wherein it was held as under:-

"9. In the present case, apparent it is that all the facts relating to the debited expenses of Rs. 87,35,400 on account of development expenses were stated in the P&L a/c wherein, a sum of Rs. 35,00,000 was taken to the balance-sheet as provision for project development. All the facts were definitely available before the AO at the time of framing of the original assessment order. A look at the reasons recorded by the AO for the purpose of reopening makes it clear that the observations were made as if the successor AO was sitting in appeal over the original assessment order dt. 19th Dec, 2008; and it was sought to be suggested as to what was meant by a 'known liability' and as to whether the provision made on the basis of the quotations would qualify for liability or not. It was suggested that this amount, being not an expenditure, should have been added to the total income. It was further suggested that Rs. 33,48,915 was debited to the registration and stamp charges and sale of plot though registration charges are generally borne by the purchaser and not by the seller. Hence, according to the AO, these expenses were wrongly claimed by the assessee."

8. Further, reliance was also placed on the judgment of Hon'ble Rajasthan High Court in the case of CIT vs. Hindustan Zinc Ltd [2016] 70 taxmann.com 262 (Raj) wherein it was held as under:-

"12. In the backdrop of the settled position of law noticed hereinabove adverting to the facts of the present case, it is to

be noticed that the assessee had made true and full disclosure of all relevant facts relating to the claim of additional depreciation and also in respect of claim for grant of deduction under Section 80 IA. A separate audit report in the prescribed form 10CCB in support of the claim for deduction under Section 80IA/80IB was also duly submitted. The assessee had also submitted reply pursuant to all queries made by AO during the assessment proceedings under Section 143(3) of the Act. In this view of the matter, the contention sought to be raised by the Revenue about non-disclosure on the basis of the failure on the part of the assessee in mentioned bifurcated amount of additional depreciation allowable in the depreciation chart is absolutely baseless. It is to be noticed that all that has been said by the AO is that after scrutiny assessment, it was observed that assessee has made incorrect claim of additional depreciation on CPP whereas, the claim for additional depreciation on CPP was allowed by the AO while framing the assessment under Section 143(3) after conscious consideration of the material on record. It is not even the case of the Revenue that the formation of the belief regarding the escapement of the assessment by the AO is based on any new material coming on record. Apparently, the formation of the belief by the AO regarding escapement of the assessment is based on re-appreciation of the material already available on record at the time of scrutiny assessment which amounts to mere change of opinion. Obviously, in the garb of purported exercise of the power to reassess, the AO cannot be permitted

to review his own order or the order passed by his predecessor. Thus, the finding arrived at by the ITAT that the reassessment proceedings initiated by the AO by mere change of opinion is patently illegal, cannot be faulted with."

9. Further, reliance was also placed on the judgment of Hon'ble Bombay High Court in the case of MSEB Holding Company Ltd. vs. DCIT [2019] 102 taxmann.com 288 (Bom) wherein it was held as under:-

"4. We have heard the learned counsel for the parties. Undisputedly, the impugned notice dated 26.3.2018 has been issued beyond the period of four years from the end of relevant assessment year i.e. 2011-12. The regular assessment was completed under section 143(3) of the Act. Thus, in view of the clear mandate of the first proviso to Section 147 of the Act, reopening notice on the above facts can only be sustained if there has been a failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment.

5. Bare reading of the reasons in support of the impugned notice would make it evident that there has been a complete disclosure of all material facts on the part of the petitioner in the regular assessment proceedings under Section 143(3) of the Act. This is so as the basis of the notice as indicted in the reasons is information collected from the examination of the records. Undisputedly, there is no new tangible material received by the Assessing Officer that has triggered the impugned notice.

Moreover, these reasons, further, record that the interest on fixed deposit amounting to Rs. 1.84 crore have been credited to profit and loss account and have been offered to tax by the petitioner as part of its business income, however, the same was not accepted by the Assessing Officer on the ground that the petitioner did not carry out any business. Be that as it may, the impugned notice is clearly hit by the first proviso to Section 147 of the Act as there has been no failure on the part of the petitioner to disclose truly and fully all material facts necessary for assessment in the proceedings leading to an order under Section 143(3) of the Act.”

10. Regarding other reasons recorded by the Assessing Officer relating to disallowance u/s 14A and provision for diminution in the value of investment, it was submitted that there is a complete disclosure of the provision in the value of investment in schedule E of the financial statement as well as claim of interest expenses under miscellaneous expenses. During the course of original assessment proceedings, a query letter was issued by the Assessing Officer specifically asking for details with respect to expenses claim during the year and necessary details were duly submitted and examined by the Assessing Officer. It was accordingly submitted that there is a complete disclosure on the part of the assessee and necessary information has been filed which has been duly examined during the original proceedings, therefore, there is no basis to hold that the income has escaped assessment on account of failure on part of the assessee to disclose truly and fully all material facts. It was accordingly submitted

that the Assessing Officer was not correct in assuming jurisdiction u/s 147 and therefore, the issue of notice u/s 148 as well as the consequent reassessment proceedings should be set aside.

11. Per contra, the Id. DR submitted that similar objections have been raised by the assessee during the course of reassessment proceedings and which have been duly disposed off by the Assessing Officer. It was submitted that the AO duly analyzed the information received and while recording the reasons for reopening of case, the AO formed the belief that the income to the extent of Rs. 3,36,18,343/- has escaped assessment within the meaning of section 147 of the Income Tax Act by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

12. It was submitted that the Hon'ble Supreme Court in the case of ACIT Vs Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 has held that under section 147, if the AO, for whatever reason, has reason to believe that income has escaped assessment, it confers jurisdiction to re-open the assessment where the case is not covered by proviso to Section 147. Further, various Courts have held that while there must exist reasons for holding a belief of escapement of income, the question whether the reasons were adequate or sufficient is not for the courts to decide. Since the belief is that of an Income-tax Officer, sufficiency of the reasons for forming the belief is not for the court to judge. Moreover, the Hon'ble Supreme Court in the case of Raymond Wollen Mills Ltd v ITO (1999) 236 ITR 34 (SC) has held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the

basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. It was accordingly submitted that in the instant case, there is direct nexus between the material coming to the notice of the AO and formation of belief of escapement of income to the tune of Rs. 3,36,18,343/-, therefore, assumption of jurisdiction u/s 147 and issuance of notice u/s 148 by the AO is as per law and the same may be confirmed.

13. We have heard the rival contentions and perused the material available on record. In this case, the original assessment proceedings were completed u/s 143(3) vide order dated 21.03.2013 and the notice u/s 148 has been issued on 31.03.2017 after four years from the end of the relevant assessment year 2010-11. Therefore, for assumption of jurisdiction u/s 147, besides other conditions, the conditions so specified in proviso to section 147 are necessarily required to be satisfied. The proviso to section 147 reads as under:

"Provided that where an assessment under sub- section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub- section (1) of section 142

or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

14. In the instant case, what is relevant is whether the income has escaped assessment by reason of failure on part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year and how the AO has dealt with such failure while recording the reasons before issuance of notice u/s 148. The reasons so recorded read as under:

"The assessee filed its return of income for AY 2010-11 on 16.03.2012 declaring total income of Rs. Nil, which was assessed u/s 143(3) at Rs. Nil vide order dated 21.03.2013. Tax was paid u/s 115JB.

(I) Afterwards, it is noticed that during the period under consideration, the assessee company sold the wind power plant at Tumkur (Karnataka) for 30260000/- after subtracting the W.D.V. 854400/- short term capital gain arise for 29405600/- further assessee shown as purchase and installed the wind power plant at Krishna (Andhra Pradesh) cost 43000000/- details as below:

S.No.	Invoice No. date	Name of Goods	Value in
1.	9101602015/ 30.03.2010	Supply of insertion making turking counter 800Kw Type E- 63	30000000
2.	9101900627/30.0 3.2010	Transportation charges	1100000

3.	9101602508/ 31.03.2010	Supply of wind mill Denia Tu transformer and D.P. Sular steel tourner STM light	5000000
4.	9101602507/31.0 3.2010 -	Supply of wind mill device Transformer and D.P. structure of enercon make wind turning counter 800Kw E-53	2300000
5.	Inv/Dr./085/2007- 10/31.03.2010	Land Development right	1600000
6.	9101602398	Civil & Industrial construction work	1500000
7.	9101602399/ 31.03.2010	Erectioning and commissioning charges of wind farm at site	1500000
		Total	430000000

Depreciation claimed as per I.T. Act 1961 assessee shown as addition of wind power plant for 4,00,00,000/-. It shown that expenditure relating to construction of Civil & commercial work and errections and commissioning charges for 30,00,000/- was capitalize. Building and plant & Machinery certificate regarding installation and connection with grid were not available with I.T Deptt. Electricity bill for the month of March 2010 was also not provided by the assessee. it was also seen that as per audit report wind power at Andhra Pradesh Power production was shown as nil. It shows that wind mill at place Krishna State Andhra Pradesh was not installed up to 31.03.2010. Assessee claimed depreciation for 3783500/- in addition to the cost of sale of wind power plant at Turpur (Karnataka) 30260000 (WDV 854400/-). Thus, omission resulted into under computation of income of Rs. 3,31,89,700/-.

(II) Further, it was also noticed that expenditure in relation to exempted income u/s 14A and rule 8D was disallowable for Rs. 27,69,678/- instead of Rs. 2,73 56/- and provision for diminution in value of investment for Rs. 26,064 - should not be subtracted from the net profit.

In view of the above facts, I have reason to believe that income to the tune of Rs. 3,36,18,343/- (Rs. 3,31,89,700/- + Rs. 4,28,643/-) has escaped assessment within the meaning of provisions of Section 147 of the IT Act, 1961 for the Asstt. Year 2010-11. The escapement was on account of failure on the part of the assessee to disclose all material facts."

15. On perusal of the reasons so recorded, the Assessing officer has stated that the income to the tune of Rs 3,36,18,343/- has escaped attention within meaning of section 147 on account of failure on part of the assessee to disclose all material facts. To determine the exact failure on part of the assessee, we refer to the individual matters which have been stated by the AO wherein the income has been stated to have escaped assessment. The income which has escaped assessment has been determined by the AO on account of under computation of income to the tune of Rs 3,31,89,700/- relating to claim of depreciation of Rs 37,83,500/- on new windmills purchased during the year and sale consideration of wind power plant to the tune of Rs 3,02,60,000/- which has been reduced from written down value of block of assets under the head "windmill". Besides, the AO has stated that the income has

escaped attention to the tune of Rs 4,28,643/- on account of disallowance u/s 14A and provision for diminution in value of investment.

16. As far as sale consideration of wind power plant to the tune of Rs 3,02,60,000/- is concerned, there is nothing which has been specified by the AO in the reasons so recorded in terms of any failure on part of the assessee to disclose any material facts. Similarly, in respect of disallowance u/s 14A and provision for diminution in value of investment, there is nothing which has been specified by the AO in the reasons so recorded in terms of any failure on part of the assessee to disclose any material facts. Therefore, as far as these two matters are concerned, the condition so specified in the proviso to section 147 is not satisfied and therefore, the AO doesn't have any legal basis to acquire jurisdiction over these matters u/s 147 of the Act.

17. Now, coming to claim of depreciation of new windmills purchased during the year, the AO has highlighted two things in terms of failure on part of the assessee. Firstly, there is no third party evidence which has been filed by the assessee and thus no evidence available on record to demonstrate that the windmill has been installed and commissioned and connected to the common grid. Secondly, the assessee has not filed any evidence in form of electricity generation for the month of march which can demonstrate that there was electricity generation during the relevant financial year and failure thereof, the claim of the depreciation has been wrongly made and allowed by the AO in the original assessment proceedings.

18. In his submissions, as we have noted above, the Id AR submitted that during the course of original assessment proceedings, the assessee duly submitted a certificate of erection and commissioning issued by the Andhra Pradesh Power Distribution Corporation Ltd which is the State Government undertaking which shows that plant was erected and commissioned as on 31.03.2010 and was under trial run. It was accordingly submitted that since plant was put to use during the year as evidenced by the commissioning certificate and was capitalized in the block of assets, depreciation claim was rightly made by the assessee. It was accordingly submitted that there is no basis to hold that the certificate regarding installation and commissioning is not available on record or has not been submitted by the assessee and thus, there was no failure on part of the assessee to disclose truly and fully all material facts.

19. On perusal of assessee's paperbook pages 14-15, we find that the assessee vide its submission dated 26.10.2012 has submitted a copy of certificate issued by Andhra Pradesh Central Power Distribution Corporation Limited and the contents thereof reads as under:

ANDHRA PRADESH CENTRAL POWER DISTRIBUTION CORPORATION LIMITED

From
The Divisional Engineer (Operations)
APCPDCL, Nandyal,
Kurnool Dist. Andhra Pradesh.

To
M/s. Compucom Software Ltd.
IT 14-17 EPIP, Sitapura,
Jaipur, 302 022.

LR.NO : DEE/O/NDL/TECHL/F.NO 000 /D.NO. 593-4 , Dated : 31-03-2010

COMMISSIONING CERTIFICATE

This is to certify that 01 No x 800 KW (0.8 MW) Enercon make Wind Energy Converter of M/s. Compucom Software Ltd., near Kondameedipalli village in Kolimigundla mandal, Kurnool district, Andhra Pradesh, has been erected and interconnected to APTRANSCO grid on 31-03-2010. From the date of interconnection, the machines are under trail run until the company declares commercial operation date.


Divisional Engineer (Operations)
APCPDCL, Nandyal

Copy submitted for kind information to:

1. The CGM (Comm. & RAC), APCPDCL, Mint Compound, Hyderabad.
2. The Chief Engineer (IPC), APTRANSCO, Vidyut Soudha, Hyderabad.
3. The Superintending Engineer (Operations), APCPDCL, Kurnool.

Therefore, as far as the first finding of the AO is concerned, the same cannot be accepted in light of clear evidence filed by the assessee towards erection and interconnection to the APTRANSCO grid as on

31.03.2010 which is very much part of the assessment records and there is thus no failure on part of the assessee in this regard.

20. In terms of non-generation of electricity and non-submission of electricity bill, it is an admitted position of the assessee, as evident from the financials and audit report, which even the AO has taken note of while recording the reasons, that windmill was under trial run and no commercial electricity has been generated which could have necessitated issuance of electricity bill. Therefore, as far as disclosure on part of the assessee is concerned, we find that there is no failure and adequate disclosure has been made in the financial statements and the tax audit report and even from the certificate so issued by the competent authority, which is filed during the course of original assessment proceedings, it is apparent that the windmill was under trial run and commercial operational date has not reached as on 31.03.2010. and there is thus no failure on part of the assessee in this regard.

21. We therefore find that all primary facts have been duly disclosed by the assessee company which demonstrate that the windmill has been installed and commissioned, connected to the common grid and under trial run as on 31.03.2010, and there is thus no failure on part of the assessee and it is for the Assessing officer to draw correct legal inference therefrom in terms of whether a machinery duly installed and commissioned and under trail run would be entitled to depreciation or not. However, as far as the disclosure on part of the assessee is concerned, we find that there is no such failure of any material facts and therefore, even in respect of the present matter, the condition so

specified in the proviso to section 147 is not satisfied and therefore, the AO doesn't have any legal basis to acquire jurisdiction over these matters u/s 147 of the Act as also held by the various authorities quoted by the Id AR which support the case of the assessee.

22. Further, we find that the matter relating to claim of depreciation on the windmills purchased during the year has been examined by the AO as clearly discernable from the assesment order. Further, there is nothing on record that any fresh information or material has been received by the AO after completion of original assessment proceedings and in fact, in the reasons so recorded, the AO has referred to the information relating to invoices, nature of goods and amounts from the original assessment order and also refer to the audit report. Therefore, we find that where the matter has been examined by the AO in the original assessment proceedings and there is no fresh material in possession of the AO, it is a case of change of opinion basis review of the same material available on record which is again beyond the mandate of section 147 of the Act. Therefore, on this ground as well, the reassessment proceedings initiated by issuance of notice u/s 148 deserve to be set-aside.

23. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that basic requirement for assumption of jurisdiction u/s 147 is not satisfied in the instant case and notice u/s 148 and consequent reassessment proceedings deserve to be set-aside and the ground so taken by the

assessee company is decided in favour of the assessee company and against the Revenue.

24. In view of our aforesaid findings where we have set-aside the notice u/s 148 and the consequent reassessment proceedings, the ground of appeal no. 2 on merits of additions made by the AO during the reassessment proceedings has become academic in nature and the same is dismissed as infructuous.

25. The Id. AR submitted that the assessee does not want to press Ground No. 3 of appeal. Hence, the ground No. 3 of appeal is dismissed as not pressed.

In the result, the appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 29/06/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/06/2021.

Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Compucom Software Limited, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-VI, Jaipur
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 256/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar