आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.3491/Chny/2018**
निर्धारण वर्ष/**Assessment Year: 2014-15**

The Assistant Commissioner of Income Tax, Corporate Circle 2, No. 63, Race Course Road, Coimbatore 641 018.	Vs.	M/s. Indsil Hydro Power & Manganese Ltd., "Indsil House", T V Samy Road (West), R.S. Puram, Coimbatore 641 002. **[PAN: AAACI4918G]**
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri G. Johnson, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri Arjun Raj, CA for Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing	:	04.08.2021
घोषणा की तारीख /Date of Pronouncement	:	09.08.2021

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the ld. Commissioner of Income Tax (Appeals) 1, Coimbatore, dated 16.10.2018 relevant to the assessment year 2014-15. Grounds No. 1 to 6 raised in the appeal of the Revenue are relating to the receipt in respect of Renewal Energy Certificates akin to carbon receipts amounting to ₹.6,37,37,141/- [wrongly mentioned as ₹.6,37,73,141/-] is whether capital receipt or revenue receipt.

2. In the assessment order, the Assessing Officer has held that as per section 2(24)(vd) read with section 28(iv) of the Income Tax Act, 1961 ["Act" in short, the value of any benefit or perquisite is taxable and clearly carbon credits is a benefit received by the assessee is taxable as revenue receipt under the head 'business and profession' and is not capital receipt or capital subsidy. Accordingly, the entire REC receipt of ₹.6,37,37,141/-

3. On appeal, by following the decision in the case of DCIT v. My Home Power Ltd. in I.T.A. Nos. 80 & 81/Hyd/2014 dated 07.05.2014 for the assessment year 2008-09 & 2009-10 and subsequently, the same has been upheld by the Hon'ble High Court of Andhra Pradesh reported in [2014] 46 taxmann.com 314, the ld. CIT(A) has held that the REC receipt is a capital receipt. For the sake of convenience, the relevant portion of the decision of the Hon'ble High Court is reproduced as under:

> *"We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns". We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."*

4. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal and relying on the assessment order, the ld. DR has pleaded for reversing the order passed by the ld. CIT(A).

5. On the other hand, the ld. Counsel for the assessee strongly placed reliance on the decision in the case of CIT v. Ambika Cotton Mills Ltd. [2021] 125 taxmann.com 206 (Madras)/433 ITR 193 and submitted that the amount received by the assessee is a capital receipt.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the case law relied on. The point at issue for consideration is whether the Renewal Energy Certificates akin to carbon receipts is capital receipt or revenue receipt. The Hon'ble Jurisdictional High Court in the case of CIT v. Ambika Cotton Mills Ltd. (supra) has held that the proceeds received by the assessee company carrying on business of power generation on sale of certified emission reduction credit (carbon credit) is a capital receipt and not business income as carbon credit is not an offshoot of business, but an offshoot of environmental concerns. Respectfully following the above decision of the Hon'ble Jurisdictional High Court, we hold that the proceeds received by the assessee is capital receipt. In view of the above, we find no reason to interfere with the order of the ld. CIT(A) and accordingly, the ground raised by the Revenue is dismissed.

7. So far as Ground Nos. 7 to 9, relating to belated payment of ₹.10,28,553/- towards PF & ESI contribution, the Assessing Officer disallowed the same on the ground that the payment was delayed, which

cannot be allowed under section 43B of the Act. On appeal, the ld. CIT(A) by considering the entire facts and circumstances of the case, observed as under:

> *"The jurisdictional High Court has considered this issue in the case of CIT vs Industrial Security and Intelligence Industries India (Pvt) Ltd. arising out of ITA No. 2048 & 2049/Mds/2014 and has upheld the decision of the ITAT, in which the assessee was allowed to claim as a deduction the deposit of employee's contribution towards Provident Fund and ESI after due date as prescribed under the relevant Act, but before the due date of filing of Return of Income under the Income Tax Act.*
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> *6.1 Section 43B overrides Section 36(1)(va) because the provisions states "Notwithstanding anything contained in any other provisions contained in this Act, a deduction otherwise allowable in this Act in respect of any sum payable by the assessee as an employer by way of contribution to any fund such Provident Fund shall be allowed, if it is paid on or before the due date as contemplated under Section 139(1) of the I.T. Act". This law has been reiterated by several High Courts viz. the Karnataka High Court in the case of M/s Essae Teraoka Pvt Ltd. vs. DCIT [246 CTR 286], Rajasthan High Court on CIT vs. State Bank of Bikaner and Jaipur [2014] 363 ITR 70, CIT vs. Jaipur Vidhyut Vitaran Nigam Ltd. [(2014) (5) TMI 222], Bombay High Court in CIT vs Nipso Fabriks Ltd. [350 ITR 327] etc.*
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> *6.2 Further, in a recent decision in the case of Principal Commissioner of Income Tax, Jaipur vs. Rajasthan State Beverages Corporation Ltd. Reported in [2017] 250 Taxman 16/84 taxmann.com 185(SC), the Hon'ble Supreme Court has held as under:*
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> > *"Amount claimed on payment of PF and ESI having been deposited on or before due date of filing of returns, same could not be disallowed under Section 43B or under Section 36(1)(va); SLP dismissed"*
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> *6.3 The Circular No.22/2015 dated 17.12.2015 of the CBDT clarifies the allowability of employer's contribution to funds for the welfare of the employees in terms of Section 43B(b) of the Income Tax Act.*
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> *6.4 In the facts and circumstances of the case, it is clear that the appellant has made the remittance of employees contribution towards PF/ESI account before the due date of filing of the Return of Income u/s 139(1) of the Act and, therefore, it is held that no disallowance can be made u/s 43B of the Act. Hence, the disallowance of Rs.10,28,553/- made by the Assessing Officer is deleted."*

8. We have considered the rival contentions, gone through the assessment order and appellate order and find no infirmity in the order passed by the ld. CIT(A). Accordingly, this ground of appeal of the Revenue is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on the 09th August, 2021 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 09.08.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.