

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No. 1289/Chny/2019
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

DCIT Corporate Circle -1, Coimbatore.	बनाम/ Vs.	Bannari Amman Sugars Ltd. 1212, Trichy Road, Coimbatore – 641 018.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACB-8933-G		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri.Vikram Vijayaraghavan (Advocate)-Ld. AR
Revenue by	:	Shri D. Manoj Kumar, Ld. CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	22-12-2021
घोषणा की तारीख / Date of Pronouncement	:	21-03-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Coimbatore [CIT(A)] dated 13-02-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 18-03-2016. The grounds raised by the revenue read as under: -

- (i) On the facts and in the circumstances of the case the learned CIT(A) erred by directing the Assessing Officer to allow depreciation at the rate of 80% on all the

Plant & Machinery used in the co-generation unit without appreciating the fact that the Income Tax Rules specifies the Plant & Machineries of a co-generation unit which are to be allowed depreciation @80%.

(ii) On the facts and in the circumstances of the case the learned CIT(A) erred by directing the Assessing Officer to grant additional depreciation on certain assets ignoring the fact that these assets did not fall in the category of assets that are eligible for claiming additional depreciation and also the fact that similar disallowance for AYs 2011-12 & 2012-13 were upheld by Ld. CIT(A).

2. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

3. The material facts are that the assessee being resident corporate assessee is stated to be engaged in manufacturing of sugar, alcohol, granite and cogeneration of power. Though the original return was already scrutinized u/s 143(3) on 26-03-2013, however, the case was reopened as per due process of law and notice u/s 148 was issued to the assessee on 21.04.2014. In the notice, it was alleged that additional depreciation of Rs.844.47 Lacs on Plant & Machinery of Power Generation unit was to be withdrawn since the additional depreciation on such assets was available only from AY 2013-14. Another reason was that the depreciation of 80% as claimed on all Plant & Machinery of co-generation unit would be available only on specified Plant & Machineries. The remaining plant & machinery would be eligible for normal depreciation of 15% and therefore, the excess depreciation of Rs.423.29 Lacs was required to be withdrawn. Further, the addition to other plant and machinery includes cranes, tanks, cables and equipment which are not eligible for additional depreciation. Accordingly, an assessment was framed on 18.03.2016 wherein all these adjustments / disallowances were made. However, upon further appeal, Ld. CIT(A) allowed the claim of the assessee against which revenue is in further appeal before us.

The issues which form part of subject matter of appeal before us are adjudicated in succeeding paragraphs.

4. Additional Depreciation on Power Generation Unit

4.1 The assessee claimed additional depreciation of Rs.844.47 Lacs on plant and machinery forming part of co-generation unit. It was pointed out that any new plant and machinery as acquired and installed after 31.03.2005 by an assessee engaged in the business of manufacturing and distribution of any article or thing (or in the business of generation and distribution of power) would be eligible for additional depreciation of 20% u/s 32(1)(iia). This would be over and above normal depreciation as available u/s 32(1)(ii). Reliance was placed on various judicial decisions in support of the claim which has been enumerated in the assessment order.

4.2 However, Ld. AO disallowed the same on the ground that the words 'or in the business of generation and distribution of power' were inserted by Finance Act 2012 w.e.f. 01.04.2013 and therefore, the additional depreciation would be allowable only from AY 2013-14. Since the assessee was engaged in the business of generation of power, excess depreciation thus claimed was to be withdrawn which aggregated to Rs.844.47 Lacs.

4.3 During appellate proceedings, the assessee relied on various judicial decisions including the decision of Chennai Tribunal in **M. Satishkumar V/s DIT (33 Taxmann.com 396)** wherein it was held that generation of electricity is a manufacturing activity and therefore, the assessee fulfills the conditions as laid down u/s 32(1)(iia). Although the amendment was effective only from 01.04.2012, however, it gives impetus to the view that generation of electricity is a manufacturing

process and qualifies for deduction u/s 32(1)(iia). The assessee also cited the case laws of decision of Hon'ble Madras High Court in **CIT V/s Texmo Precision Castings (321 ITR 481); CIT V/s VTM Ltd. (187 Taxman 319) & CIT V/s Hi Tech Arai Ltd. (321 ITR 477)**. Considering these decisions, the Ld. CIT(A) also noted that similar favorable view was taken by first appellate authority in the case of Madras Sugars Ltd. which got amalgamated with the assessee and therefore, the additional depreciation would be available to the assessee. Aggrieved, the revenue is in further appeal before us.

5. We find that in terms of the provisions of Sec. 32(1)(iia), in case of any new machinery or plant (other than ships and aircrafts) which has been acquired and installed after 31.03.2005 by an assessee engaged in the business of any article or thing, a further sum equal to 20% of actual cost of such machinery or plant shall be allowed as deduction. However, the benefit of such provisions has been extended to power sector by Finance Act, 2012 by insertion of the words "or in the business of generation or generation and distribution of power" under these provisions with effect from 01.04.2013. The explanatory memorandum to Finance Bill provides as under: -

Extending benefit of initial depreciation to the power sector

Section 32(1)(iia) provides for allowance of initial depreciation (in addition to normal depreciation) at the rate of 20% of the actual cost on new machinery or plant (other than ships and aircraft) to the assessee engaged in the business of manufacture or production of any article or thing in the year of acquisition and instalment. Under the existing provisions, the benefit of initial depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of generation or generation and distribution of power.

In order to encourage new investment by the assessee engaged in the business of generation or generation and distribution of power, it is proposed to amend this section to provide that an assessee engaged in the business of generation or generation and distribution of power shall also be allowed initial depreciation at the rate of 20% of actual cost of new machinery or plant (other than ships and aircraft) acquired and installed in a previous year.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

It is the submission of Ld. DR that the amendment was not clarificatory in nature and it was prospective only. Therefore, the assessee was not entitled for additional depreciation in this year. The Ld. AR, on the other hand, submitted that the assessee was engaged in co-generation of power. It has been held in various decisions that the generation of electricity amounts to production of article or thing and therefore, de hors the amendment, the assessee engaged in such activities was always entitled for additional depreciation even prior to AY 2013-14. The copies of various decisions favoring the assessee have been placed on record.

6. Upon perusal of the decision of Chennai Tribunal in **M. Satishkumar V/s DIT (33 Taxmann.com 396 28.09.2012)**, we find that identical question has been decided by coordinate bench in assessee's favor as under: -

9. We have heard the submissions made by the respective parties and have also examined the judgments orders relied on by the authorised representative of the assessee. A perusal of the judgments clearly shows that generation of electricity is akin to manufacturing of a new product. In the instant case, electricity which may not be seen with the eyes, however, its effect can be seen and felt. The electricity can be transmitted, transferred, delivered, stored, possessed, etc. The hon'ble Supreme Court in the case of the *Madhya Pradesh Electricity Board, (supra)* has held that electricity falls within the definition of goods under the provisions of Sale of Goods Act, 1930. The Delhi Bench of the Tribunal in the case of *National Thermal Power Corporation Ltd. (supra)* after a detailed examination of several judgments, Acts, Constitution of India, has concluded that the process of generation of electricity is akin to manufacture of an article or thing.

10. In view of the above, we are of the considered opinion that generation of electricity is a manufacturing activity. The assessee is involved in the manufacturing activity and fulfils the conditions as laid down under section 32(1)(iia). The Government vide Finance Act, 2012 has amended the provisions of section 32(1)(iia) to include the business of generation or generation and distribution of power, eligible for benefit under section 32(1)(iia). Although the said amendment is with effect from April 1, 2013 but it gives impetus to the view that generation of electricity is a manufacturing process and qualifies for the benefits under section 32(1)(iia). In view of the above, the order of the Commissioner of Income-tax

(Appeals) is upheld and the appeal of the Revenue is dismissed being devoid of merit.

This decision has been rendered after considering the decision of Hon'ble High Court of Madras in **CIT V/s Texmo Precision Castings (321 ITR 481)**; **CIT V/s VTM Ltd. (187 Taxman 319)**; **CIT V/s Hi Tech Arai Ltd. (321 ITR 477)**; the decision of Hon'ble Supreme Court in the case of **CST V/s Madhya Pradesh Electricity Board [1970] 25 STC 188 (SC)** & **State of Andhra Pradesh v. National Thermal Power Corporation Ltd. 2002 (4) TMI 694 (SC)**.

This decision has subsequently been followed by other benches of the Tribunal including in the decision of Kolkata Tribunal in **Damodar Valley Corporation V/s DCIT (72 Taxmann.com 127)** which has subsequently been affirmed by Hon'ble High Court of Calcutta which is reported at 134 Taxmann.com 63.

7. We find that except for relying upon the amendment, the revenue is not able to demonstrate that the aforesaid decisions are not applicable to the facts of the case. No contrary decision has been shown to us. Under these circumstances, we confirm the impugned order on this issue and dismiss the ground raised by the revenue.

8. Excess depreciation Claim of 80% instead to 15%

8.1 The Ld. AO proceeded to disallow higher depreciation of 80% as claimed by the assessee on Chimney, Bagasse Handling System, Distribution Control Systems, Air Compressor, Ash Handling Systems, Front end loader and fuel handling systems. The assessee submitted that these assets were part and parcel of power generation unit. To support the same, the work involved in the process of generation of power along with the usage of each of this part was elaborately

explained in its reply. The Engineering plan for the whole cogeneration system was also enclosed to explain the process of whole cogeneration unit and the essential / eminent integrated parts of the unit. It was thus submitted that the said asset forms an integral part of power generation plant and eligible for higher rate of depreciation.

8.2 The Ld. AO rejected assessee's submissions by observing that these articles were mere accessories and as per entry 8(ix)(D) of New Appendix 1 of tables of depreciation, only specified assets were eligible for 80% depreciation. Accordingly, disallowance of Rs.423.29 Lacs was made.

8.3 The Ld. CIT(A), after considering the manual / literature of all the equipment came to a conclusion that the assets were part and parcel of power generation unit. Each item would not have any function by itself except when it forms part of the whole system. The relevant findings with respect to each of the asset was as under: -

a. Chimney

In a cogeneration plant, the gases produced are first cooled and then excavated through the chimney. This chimney forms an inseparable accessory of a cogeneration plant and hence it is eligible for 80% depreciation.

b. Bagasse handling system

Bagasse, being the combustible product is used in the cogeneration plant. A bagasse handling system carries the bagasse from the bagasse yard to the furnace by using conveyor belts. It is also a part of the cogeneration system as the core raw material (bagasse) used for the generation of power is carried through this system. Without this system cogeneration system will not operate. Hence this is attributable to 80% depreciation.

c. Distribution control systems:

Distributed control system is a computerized control system used to control the production line in the industry. In a sugar - Co generation plant, the controller elements are not centrally located. DCS helps in routing the control consistently. It is a system used to automate the energy flows within the factories and hence, it is evident that it is falling under the heading "Instrumentation and Monitoring System for monitoring energy flows" in the category "Automatic Electrical Load Monitoring System". The same is eligible for claiming 80% Depreciation.

d. Air compressor

The air compressor is a device that converts power into kinetic energy, by compressing and pressurizing the air. This pressurized air is used to rotate the

turbine and in turn power is produced. This is an integral part of power generation plant and hence falls under the 80% depreciation slab.

e. Ash handling systems:

The ash produced from combustion of coal and bagasse, is to be disposed off rightly. In order to do that the ash handling system is used. This transports the ash from the furnace to the ash yards. This is one of the strenuous tasks in a cogeneration plant and since this does hand in hand with the power generation, 80% depreciation is claimed.

Finally, it was held that the assets mentioned above form part of cogeneration plant for which depreciation @ 80% is admissible. Accordingly, Ld. AO was directed to grant depreciation of Rs.423.29 Lacs. Aggrieved, the revenue is in further appeal before us.

9. We find that this issue is covered in assessee's favor by the decision of Vishakhapatnam Tribunal in **Sri Sarvaraya Sugars Limited V/s JCIT (ITA No.577/Viz/2014 20.12.2017)** wherein it was held that various components which form integral part of cogeneration plant are to be allowed higher rate of depreciation. We find that the facts are similar in the present case whereas the undisputed findings are that the various components form part of integral part of cogeneration plant. These components could not be used on standalone basis but part and parcel of power generation unit. Each item would not have any function by itself except when it forms part of the whole system. Therefore, no infirmity could be found in the impugned order, on this issue. The grounds thus raised stands dismissed.

10. Excess Additional Depreciation

10.1 It was alleged by Ld. AO that certain asset totaling to 24 in nos. aggregating to Rs.2510.79 Lacs would not be eligible for additional depreciation u/s 32(1)(ii). The same has been detailed on page nos. 10-11 of the assessment order. The assessee submitted that additional depreciation is admissible in terms of the provisions of Sec.32(1)(iia)

since the same do not preclude the allowance of the same. However, the same was rejected by Ld. AO and disallowance of Rs.251.07 Lacs was made in the assessment order.

10.2 The Ld. CIT(A) opined that the assessee was engaged in the manufacturing business. It was also held that machinery utilized in the business of generation of power would be entitled for additional depreciation. The assessee submitted that these assets were used at factory for the business of manufacture or production of any article or thing during its normal course. These assets were not previously used and therefore, the conditions of Sec.32(1)(iia) were duly fulfilled by the assessee. Concurring with same, Ld. AO was directed to allow additional depreciation of Rs.251.07 Lacs. Aggrieved, the revenue is in further appeal before us.

11. We find that it is undisputed position that the assessee has fulfilled all the conditions laid down u/s 32(1)(iia) for claiming additional depreciation. In such a case, new plant & machinery as installed by the assessee would be entitled for additional depreciation since the assessee was engaged in manufacturing and production of article or thing. The Hon'ble High Court of Madras in the case of **CIT V/s VTM Ltd. (187 Taxman 319)** held that in order to claim additional depreciation u/s 32(1)(iia), what is required to be satisfied is only that a new machinery or plant has been acquired and installed after 31-3-2002 by an assessee, who was already engaged in business of manufacture or production of any article or thing. The provisions do not state that setting up of a new machinery or plant, which was acquired and installed after 31-3-2002, should have any operational connectivity to article or thing that was

already being manufactured by the assessee. Respectfully following the same, we dismiss the grounds raised by the revenue.

Conclusion

12. The appeal stands dismissed.

Order pronounced on 21st March, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 21-03-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF