

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.ITA No.417/Ahd/2020
Assessment Year : 2015-16

GFL Limited (Earlier Known as Gujarat Fluorochemicals Limited) 2 nd Floor ABS Towers Old Padra Road Race Course Vadodara - 390 007 PAN: AAACG6725H	Vs	The Pr.CIT-1 Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N.Soparkar, Sr.Adv. & Shri Parin Shah, AR
Revenue by :		Shri Vijay Kumar Jaiswal, CIT-DR

सुनवाई की तारीख/Date of Hearing : 04/05/2022
घोषणा की तारीख /Date of Pronouncement: 15/06/2022

आदेश/ORDER

PER PRAMOD M. JAGTAP, VICE-PRESIDENT

This appeal filed by the Assessee is directed against the order of Ld. Principal Commissioner of Income-tax-1, Vadodara [Pr.CIT] dated 29th April-2020 passed u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee, in the present case, is a company which is engaged in the business of Manufacture, Sale & Trading of Refrigerant Gases &

Chemicals. The return of income for the year under consideration was filed by it on 28/11/2015 declaring loss of Rs.15,80,73,858/- under the normal provisions of the Act and book profit of Rs.4,15,61,91,575/- u/s.115JB of the Act. In the assessment completed u/s.143(3) of the Act vide an order dated 26/12/2017, the Assessing Officer determined the total income of the assessee at a loss of Rs.11,88,92,509/- under the normal provisions of the Act and book profit u/s.115JB of the Act at Rs.4,19,53,31,478/-. The records of the said assessment came to be examined by the Pr.CIT and on such examination, he found that the order passed by the Assessing Officer u/s.143(3) of the Act on 26/12/2017 was erroneous and prejudicial to the interests of the revenue on account of the following:

“On verification of records, it is seen that the CBDT vide Notification No.15/2012 [F.No.149/21/2010-SO (TPL)] S.O. 694(E), dated 30-3-2012, revised depreciation rate on Windmills by making amendment in the Table, in the New Appendix I of the Income Tax Rules, 1961. After change, restricted depreciation of 80 per cent was available on windmills installed on or before 31st day of March, 2012. The CBDT, thereafter, vide Notification No.43/2014 [F.NO.152/1/2013-TPL]/SO 2399(E), dated 16-9-2014, made amendment in the New Appendix I of IT Rules by inserting the words “installed on or after the 1st day of April, 2014” in place of “installed on or before 1st day of March, 2012”. Thus, depreciation on windmills installed before 1 April 2014 is available at the rate of 15 per cent only.

The assessee (Gujarat Fluorochemicals Ltd) had filed return of income on 28.11.2015 declaring total loss of Rs.15,80,74,858/-. The total income under provisions of Section 115JB was declared at Rs.415,61,91,575/-. The assessee revised its return on 30.03.2017 without altering its income. The case was selected for scrutiny and the assessment procedure was completed on 26.12.2017 at the assessed income of Rs.(-)11,88,92,509 and the revised book profit u/s.115JB was Rs.419,53,31,478/-. Scrutiny of income tax return of the assessee revealed that the assessee had availed 80% depreciation of Rs.99,07,514 on written down value of Rs.123,84,392 on the first day of

previous year of wind mill instead of depreciation of Rs.18,57,659 allowable at the rate of 15%. This has resulted in excess deduction of depreciation of Rs.80,49,855/- and consequent potential tax effect of Rs.27,36,1456/-.

It is, therefore, seen that necessary inquiries on the aforementioned issue were not conducted by the Assessing Officer during the assessment proceedings, which has rendered the assessment order passed by the A.O. u/s.143(3) of the Act, erroneous and prejudicial to the interest of revenue."

3. The Ld. Pr.CIT accordingly issued a notice u/s.263 of the Act on 24/02/2020 pointing out the above error to the assessee and seeking its explanation in the matter. In reply, the following submission was filed by the assessee in writing:.

"..... It is submitted that there is no error in either the Return of income of income or in the Assessment Order in view of the following:

- (i) It is firstly submitted that Income tax Act, Income tax Rules and the relative Appendix do not prescribe rates of depreciation for individual assets. The rates are prescribed for groups of assets called 'Blocks' in appendix. The copy of the attached vide annexure – 1.*
- (ii) With that perspective, the statement in the notice relating to the rates for windmills being prescribed or amended is incorrect. Windmills are part of different blocks of assets depending on when they were acquired.*
- (iii) We enclose our Return of Income in the Form ITR 6 attached vide annexure – 2 which shows that we have not claimed any depreciation for individual assets but is claimed for blocks of assets. The observation in the notice regarding claim of '80% depreciation of Rs.99,07,514 on written down value of Rs.123,84,392 for windmill is again incorrect as it refers to depreciation on block of assets of 'Renewable Energy Devices'".*
- (iv) When windmills were acquired by the Company in the F.Y. 2011-12, their value were added in the block of 'Renewable Energy Devices' as*

per the Scheme of Income tax Act, once an assets becomes part of block, it loses its identity and thereafter there is no provision, process or method to remove that asset or its value from the block for computing depreciation in subsequent years.

- (v) *The amendment referred to in the notice makes windmills ineligible for entering this block of Renewable Energy Devices. We are in compliance with this amendment in as much as we have not acquired/or installed any windmill to this block after this amendment.*

In view of the above, there is no error in the Assessment Order.

However, without prejudice to above, it is submitted that even assuming that there is some case for holding otherwise, considering that assessments are completed/returns are already filed for later years on the basis that depreciation at 80% is allowed as claimed, assessment in this year cannot be so revised as to make it inconsistent with position in later years. If it was revised, it would be necessary to revise later year assessments to allow higher depreciation on higher written down value and ultimately in effect there will not be any tax effect."

3.1. The Ld. Pr.CIT did not find merit in the submission made on behalf of the assessee for the following reasons given in paragraph No.4 of impugned order:

"4. The submissions made by the assessee & also the facts of the case have been carefully considered. The CBDT vide Notification No.15/2012 [F.No.149/21/2010-SO(TPL)] S.O. 694(E), dated 30-3-2012, revised depreciation rate on Windmills by making amendment in the Table, in the New Appendix I of the Income Tax Rules, 1961. After change, restricted depreciation of 80 per cent was available on windmills installed on or before 31st day of March, 2012. The CBDT, thereafter, vide 'Notification No.43/2014 [F.NO.152/1/2013-TPL]/SO 2399(E), dated 16-9-2014, made amendment in the New Appendix 1 of IT Rules by inserting the words "installed on or after the 1st day of April, 2014: in place of "installed on or before 31st day of March, 2012". Thus, depreciation on windmills installed before 1 April 2014 is available at the rate of 15 per cent only. The assessee had availed 80% depreciation of Rs.99,07,514 on written down value of

Rs.123,84,392 on the first day of previous year of wind mill instead of depreciation of Rs.18,57,659 allowable at the rate of 15%. This has resulted in excess deduction of depreciation of Rs.80,49,855/-. Besides, **as per Section 32(1) of the Income tax Act,**

In respect of depreciation of –

- (i) Buildings, machinery, plant or furniture, being tangible assets;
- (ii) Know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998.

Owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed –

- (i) **in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed.**
- (ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed.

Since, windmills fall in the category of assets of an undertaking engaged in generation or generation and distribution of power, therefore as per Section 32(1) of the Act, depreciation thereupon was required to be allowed at the prescribed rate of 15% and therefore, question of entering them (windmills) in block of assets should not have arisen.

Notwithstanding to the above, even if the windmills were entered into certain 'block of assets', merely because depreciation was claimed/allowed in earlier years on these windmills at the rate of 80% on the ground that these fall within Block of Assets of 'Renewable Energy devices' cannot be a ground to allow the same at the rate of 80% in the year under consideration when the rate of depreciation was amended to 15% by the aforementioned notification of the CBDT.

It is well settled that every year is an independent unit and merely because depreciation was allowed earlier by revenue at the then prescribed rate of 80% does not mean that the same will continued to be allowed at this rate in the year under consideration also inspite of the fact that the rate of

depreciation on windmill was amended to 1% by the aforementioned notification of the CBDT. Allowing depreciation under section 32 on these windmills at the rate of 80% on the ground that they form part of Block of Asset, will lead to taking concept of Block of Asset to limits of absurdity, keeping in view peculiar facts of this case. The concept of Block of Asset cannot be stretched to an extent where it leads to an absurdity. Besides, as mentioned earlier the windmills fall in the category of assets of an undertaking engaged in generation or generation and distribution of power, therefore as per Section 32(1) of the Act, therefore, depreciation on them was required to be allowed at the prescribed rate of 15% and therefore, question of entering them (windmills) in block of assets should not have arisen.

Thus, depreciation under section 32 under these circumstances cannot be allowed on these two properties merely on the grounds that once these properties entered Block of Assets viz. Renewable Energy Devices, many years back and continues to be part of Block of Asset viz. Renewable Energy Devices, despite the fact that prescribed rate of depreciation on them had undergone substantial change from 80% to 15%, which cannot be given complete go by.

It may, therefore, be seen that necessary enquiry, examination and verification on the aforementioned issue were not conducted by the Assessing Officer during the assessment proceedings, which has rendered the assessment order passed by the A.O. u/s.143(3) of the Act, erroneous and prejudicial to the interest of revenue."

4. For the reasons given above, the Ld. Pr.CIT set aside the order passed u/s.143(3) of the Act and directed him to consider and decide the issue relating to the depreciation admissible to the assessee on windmills afresh keeping in view the relevant provisions of the Act as well as the observations made by him after giving the assessee an opportunity of being heard. Aggrieved by the order of the Ld. Pr.CIT passed u/s.263 of the Act, the assessee has preferred this appeal before the Tribunal.

5. The Ld.counsel for the assessee, at the outset, invited our attention to the Schedule of depreciation to submit that windmills installed on or before

31/03/2012 were entitled for higher depreciation @80%. He submitted that the schedule of depreciation was subsequently amended and the windmills installed on or after 1st day of April-2014 were again made eligible for depreciation at higher rate of 80% as per the said amendment. He contended that the windmills installed between 01/04/2012 to 31/03/2014 thus were not entitled for higher depreciation @80% but the windmills installed on or before 31st day of March-2012 continued to be eligible for depreciation @80% even for the Assessment Years 2013-14 and onwards as rightly claimed by the assessee and allowed by the Assessing Officer in the assessment completed u/s.143(3) of the Act. He contended that the conclusion arrived at by the Ld. Pr.CIT in his impugned order that depreciation on all the windmills installed before 1st April-2014 were eligible for depreciation only @15% based on the amendment made in the depreciation table given in Appendix-I of the Income Tax Rules, 1962 thus is not correct and it was only the windmills installed during the period from 01/04/2012 to 31/03/2014 that were eligible for normal depreciation @ 15% and not at the higher rate of 80%. He contended that all the windmills on which higher depreciation @ 80% was claimed by the assessee had been installed on or before 31st day of March-2012 and the same were thus continued to be eligible for depreciation @80%. He also contended that the said windmills installed on or before 31/03/2012 had already entered the block of Plant & Machinery entitled for a higher depreciation of 80% and since they had lost the separate or individual identity, the same could not be taken out of the block and treated separately for allowing depreciation at different rate of 15%.

6. The Ld.DR, on the other hand, submitted that the amendment made in the depreciation table given in Appendix-I to the Income Tax Rules, 1962 has an effect that the benefit of higher depreciation given on windmills installed on or before 31/03/2012 was withdrawn and the same was again restored only for the windmills installed on or after 1st April-2014. He contended that the assessee therefore was not entitled for depreciation @80% on the windmills installed on or before 31/03/2012 for AY 2013-14 and subsequent years and its claim for such higher depreciation for the year under consideration, i.e. AY 2015-16 was allowed by the Assessing Officer without considering the effect of the amendment made in depreciation table given in Appendix-I to the Income Tax Rules, 1962. He contended that the order passed by the Assessing Officer u/s.143(3) of the Act on this issue thus was erroneous as well as prejudicial to the interests of the revenue and Ld. Pr.CIT was fully justified in revising the same by exercising the powers conferred upon him u/s.263 of the Act.

7. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the benefit of higher depreciation @80% was initially restricted to the windmills installed on or before 31st day of March-2012 as per the specific entry prevalent at the relevant time in Appendix-I to the Income Tax Rules, 1962. The said entry was subsequently amended to make windmills installed on or after the 1st day of April-2014 to be eligible for the benefit of higher depreciation @80%. A careful analysis of both these entries shows that the windmills installed during the period from 01/04/2012 to 31/03/2014 were not entitled for higher depreciation @80% as rightly contended by the Ld.counsel for the assessee and there is nothing to show that the effect or intention of the

amendment made was to withdraw the benefit of higher depreciation @80% allowed to windmills installed on or before 31/03/2012 as sought to be contended by the Ld.DR. The windmills installed on or before 31/03/2012 continued to be eligible for the benefit of higher depreciation @80% even for AY 2013-14 and the subsequent years and there is nothing to show or even suggest the said benefit was withdrawn or discontinued from AY 2013-14 onwards. Since the windmills on which higher depreciation @80% was claimed by the assessee for the year under consideration had been undisputedly installed by the assessee on or before 31/03/2012, we are of the view that the assessee-company was entitled for higher depreciation @80% on the said windmills for the year under consideration and there being no error in the order of the Assessing Officer passed u/s.143(3) of the Act allowing depreciation at higher rate of 80% on the said windmills, the Ld. Pr.CIT is not justified to revise the same vide his impugned order passed u/s.263 of the Act. In view of that matter, we set aside the impugned order passed by the Ld. Pr.CIT u/s.263 of the Act and restore that of the Assessing Officer passed u/s.143(3) of the Act.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 15th June, 2022 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 15/ 06/2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT-1, Vadodara
4. आयकर आयुक्त (अपील)/ The CIT(A)-concerned
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad