

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 351/Del/2021
(Assessment Year : 2017-18)

DCIT Circle – 4(2), New Delhi PAN No. AAFCC 3438 C (APPELLANT)	Vs.	Clean Wind Power (Ratlam) Pvt. Ltd., 201, 3 rd Floor, Okhla Industrial Estate, Power-2, South Delhi, New Delhi-20 (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	04.08.2022
Date of Pronouncement:	17.08.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 14.09.2020 passed by the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who filed its return of income for A.Y. 2017-18 on 01.11.2017 declaring loss of Rs.29,12,64,463/-

which was finally revised on 25.02.2019 declaring loss of Rs.29,13,29,085/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 20.12.2019 determining the loss at Rs.27,39,67,190/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 14.09.2020 in Appeal No.10393/19-20 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *On the facts and circumstances of the case, whether the Ld CIT(A) has erred on facts and in law in allowing depreciation on Wind Turbine Generator (WTG) at enhanced rate including ignoring the facts that income Tax Act, has prescribed different rates of depreciation for Civil Structure (which includes items like Steelm RMC and Labour Charges for C & G of 5 nos. of WTG) and WTG portion of the Windmill.*
2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.”*

5. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed on its behalf though the file reveals that the notice of hearing was served on the assessee. The perusal of the CIT(A)'s order reveals that he has decided the issue after following the decisions of High Courts and Tribunal cited therein. In such a situation, we proceed to dispose of the appeal *ex parte qua* the assessee and after hearing the Learned DR.

6. During the course of assessment proceedings, AO noticed that assessee had claimed depreciation on Wing Turbine Generator (WTG) @ 7.69%, which include items like Steel, RMC, Labour Charges for E&C of 50 nos of WTG. AO was of the view that assessee has claimed depreciation at higher rate i.e. @ 7.69% as against the prescribed rate of 3.02%. The assessee was asked to show-cause as to why the depreciation not be disallowed to which assessee *inter alia* submitted that the civil structure connected to a Windmill is specifically meant for installation of microprocessor, hub, nacelle, turbine etc. which are integral part of a windmill and that the windmill cannot be segregated into civil structure like tower and mechanical parts. It was thus submitted that assessee has rightly claimed the depreciation @ 7.69%. The submissions of the assessee was not found acceptable to AO. AO thereafter, tabulated the excess depreciation worked out by the assessee at Rs.1,71,04,168/- and disallowed the excess depreciation.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after relying on the decisions of **Rajasthan High Court in the case of CIT vs. Mehur Electricals & Mechanical Engineers Pvt. Ltd. 82 taxmann.com 102 (2017), CIT vs. K. K. Enterprises 51 taxmann.com 190 (Raj.)(HC), Delhi Tribunal in the case of M/s. Gemscab Industries Ltd. vs DCIT and Chennai Bench of Tribunal in the case of ACIT vs. Kutti Spinners Pvt. Ltd., ITA No.755/766 of 2013** held that the Civil structure is part of the composite structure and

therefore cannot be seen in isolation and, therefore, the assessee was eligible to claim the depreciation at enhanced rate.

8. Aggrieved by the order of CIT(A), Revenue is now before us.

9. Before us, Learned DR supported the order of AO.

10. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to denial of claim of additional depreciation by AO and which has been set aside by CIT(A). We find that CIT(A) after considering the various decisions cited in his order has held that the civil structure to be part of composite structure of the windmill and therefore cannot be seen in isolation. Before us, Revenue has not pointed any fallacy in the findings of CIT(A) nor has pointed to any contrary binding decision in its support. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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

Order pronounced in the open court on 17.08.2022

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 17.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI