

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.2602/Chny/2018  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Harshini Textiles Ltd.</b> (amalgamated company of Sun Spintex India Ltd.) 504, Avinashi Road, Peelamedu, Coimbatore – 641 004.	<b>बनाम/ Vs.</b>	<b>ITO</b> Corporate Ward-4, Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAQCS-4328-E		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri R. Vijayaraghavan (Advocate)-Ld. A.R
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	05-09-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05-09-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Coimbatore [CIT(A)] dated 26-07-2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 28-12-2016. The grounds raised by the assessee read as under:

- (1) The order of the learned CIT(A), confirming the allowance of depreciation on wind mills @ 15% as against 80% to which the appellant is entitled, is opposed to law and unsustainable in the facts and the circumstances of the case.
- (2) The learned CIT(A) ought to have held that the Notification No.15/2012 [F.No.149/21 /2010-SO(TPL)] S.O.694(E) dated 30.03.2012, issued by CBDT,

specifically introduced the words "installed on or before 31<sup>st</sup> day of March, 2012", which can in no way be interpreted, as not applicable to the facts of the appellant's case for restricting the claim of depreciation to 15%, as the wind mills had been installed before 31.03.2002, in the facts and the circumstances of the case and in law.

(3) The learned CIT(A) is wrong in his reasoning for upholding the disallowance of depreciation restricting it to 15% as against 80% claimed, in the facts and the circumstances of the case and in law.

(4) The learned CIT(A) has not disputed the fact that the wind mills in respect of which 80% depreciation claimed, were installed before the 31<sup>st</sup> day of March 2012, to uphold the disallowance, on his logic, inapplicable, having regard to the Notification (supra) and in the facts and the circumstances of the case and in law.

(5) For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, is opposed to law and unsustainable in the facts and the circumstances of the case.

As is evident, the assessee is aggrieved by the fact that depreciation on windmills have been allowed at lesser rate of 15% as against rate of 80% as claimed by the assessee.

2. The Ld. AR, at the outset, relied on the decision of Chennai Tribunal in M/s Senthil Energy Pvt. Ltd. Vs. ITO (ITA No.581/Chny/2019 dated 28-04-2021). A copy of the same has been placed on record. The Ld. Sr. DR relied on the orders of lower authorities.

3. During assessment proceedings, it transpired that the assessee purchased used wind mills during financial year 2012-13 and claimed depreciation @80%. The previous owners had purchased the windmills and commissioned it during financial year 2005-06 and claimed depreciation @80%. The Ld. AO, considering the amendment in the table of the new Appendix-I dated 30-03-2012 which provide that the windmills installed after 01-04-2012 would be eligible for depreciation @15% only, restricted the depreciation to the extent of 15%. The Ld.

CIT(A) confirmed the same against which the assessee is in further appeal before us.

4. We find that identical issue has been addressed by coordinate bench in the cited decision, vide para-8, as under:

8. We have given our thoughtful consideration to the reasons given by the Assessing Officer for disallowance of depreciation over and above 15% on windmills and find no merits, because the Act specifically states that windmills installed on or before 31.03.2012 are eligible for depreciation @ 80%. The said rule does not give emphasize for purchase/acquisition of windmills, but only talks about installation. When the Act itself talks about installation of windmill, then acquisition of such asset is not material to decide rate of depreciation. In this case, there is no dispute with regard to the fact that windmills were installed on or before 31.03.2012. It is an admitted fact that the assessee has purchased used windmills on 'as is where is' basis for the financial year 2013-14. Therefore, once the windmills are installed before 31.03.2012, then rate of depreciation is applicable as per pre-amended Appendix-I of Rule 5 of Income Tax Rules,1962. Further, as per said rule, rate of depreciation on windmills which are acquired and installed on or before 31.03.2012 is at 80%. Therefore, we are of the considered view that the Assessing Officer as well as learned CIT(A) erred in coming to the conclusion that assessee became owner of windmills only after 31.03.2012 and entitled for depreciation as per amended rate, when the law is very clear about installation of windmills and acquisition of asset is immaterial to claim depreciation. In this case, since the windmill was acquired and installed on or before 31.03.2012 and assessee has become second owner and has not dismantled from one place and re-erected in another place, the interpretation given by the Assessing Officer and learned CIT(A) are contrary to the provisions of Rule 5 of Income Tax Rules,1962. Hence, we set aside the order of the learned CIT(A) and direct the Assessing Officer to allow depreciation @ 80% on windmills as claimed by the assessee.

Considering the same, we direct Ld. AO to allow higher rate of depreciation as claimed by the assessee.

5. The appeal stand allowed.

Order pronounced on 05<sup>th</sup> September, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 05-09-2022  
EDN/-

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded 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