

आयकरअपीलीयअधिकरण
मंबईपीठ“ई”
श्रीविकासअवस्थी. न्यायिकसदस्यएवं
श्रीएमबालगणेश, लेखाकारसदस्यकेसमक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “E”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 1499/मुं/2019 (नि.व. 2015-16)
ITA NO.1499/MUM/2019(A.Y.2015-16)

Triveni Sangam Holdings &
Trading Company Pvt. Ltd.
3rd Floor, Bharat Insurance Building,
15-A, Horniman Circle,
Fort, Mumbai – 400 023.
PAN: AAAC-8439-M

..... अपीलार्थी/Appellant

बनाम Vs.

Astt. Commissioner of Income-tax,
Circle -2(3)(1), Room No.552,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Haresh P. Shah

प्रतिवादी द्वारा/Respondent by : Shri Pitta Samuel

सुनवाई की तिथि/ Date of hearing : 06/07/2022

घोषणा की तिथि/ Date of pronouncement : 03/10/2022

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -6 Mumbai, [in short 'the CIT(A)'] Mumbai dated 17/12/2018 for the Assessment Year 2015-16.

2. The assessee in appeal has assailed the order of a First Appellate Authority primarily on two grounds:

(i) Disallowance of depreciation at higher rate on assets and expenses forming part of Solar Plant.

(ii) Addition of Rs.3,02,400/- as deemed rent.

3. Shri Haresh P. Shah appearing on behalf of the assessee submitted that the assessee has set up Solar Power Plant. This is the only business of the assessee. The assessee has claimed depreciation @ 80% on Solar Plant including civil structure, electrical and other ancillary equipment. The Assessing Officer allowed depreciation @ 80% only on Solar Photovoltaic Modules, power conversion inverters and disallowed assessee's claim of higher rate of depreciation on civil structure including solar mounting structure, labour charges for civil works, electrical components, design and engineering erection and installation services, components of renewal energy devices, testing and commissioning services for solar project. The Id. Authorized Representative for the assessee submits that the solar photovoltaic modules inverters in isolation could not work unless they are installed and connected through electrical cable with other devices. The electrical cable, civil structure erection and installation, etc. are integral part of Solar Power Plant, therefore, assessee is eligible to claim depreciation @ 80% on entire Solar Power Plant. The depreciation claimed by the assessee on Solar Power Plant is akin to claiming depreciation on Windmill. Both Solar Power Plant and Windmill are renewable source of energy. The Id. Authorized Representative

for the assessee in support of his contention placed reliance on following decisions:

- (i) CIT vs. M/s. Western Precicast Pvt. Ltd. in Income Tax Appeal No.1634 of 2014 order dated 14th March, 2017 by Hon'ble Bombay High Court.
- (ii) CIT vs. CTR Manufacturing Industries Ltd. in Income Tax Appeal No. 2125 of 2013 order dated 1st March, 2016 by Hon'ble Bombay High Court.
- (iii) CIT vs. Cooper Foundary Pvt. Ltd. in Income Tax Appeal No. 1326 of 2010 order dated 14th June, 2011 by Hon'ble Bombay High Court.
- (iv) Shreem Electric Limited vs. JCIT in ITA No.2107/PN/2013 decided on 30/11/2015 by Pune Bench.

3.1 The Id. Authorized Representative for the assessee submits that in ground No.4 of appeal, the assessee has assailed addition on account of deemed rent. He contended that the property on which the Assessing Officer has applied provisions of deemed rent does not fall in the area where Rent Control Act applies. Therefore, for the purposes of determining deemed rent Municipal Value has to be taken into consideration. The Id. Authorized Representative for the assessee in support of his contention placed reliance on following decisions:

- (i) PCIT vs. Laxmi Jain in Income Tax Appeal No.1285 of 2015 order dated 16th April, 2018 by Hon'ble Bombay High Court
- (ii) Virendra Jain vs. DCIT, ITA No.446/Mum/2018 decided on 22/01/2019 by Mum-Trib.

4. Per contra, Shri Pitta Samuel representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submitted that the assessee is eligible for claiming depreciation at higher rate on Solar Power generating

system/assets as specified in the Depreciation Table giving the rate of depreciation admissible – Appendix-I to the Income Tax Rules, 1962.

5. Both sides heard, orders of authorities below examined. The ground No.1 to 3 of the appeal relate to the single issue of assessee's claim of depreciation on Solar Power Generation Plant. The assessee has claimed depreciation @ 80% on following items of the Solar Power Plant:

Sr. No.	Name of the assets taken under Solar Power Plant
1.	Civil material for 1.20 MWp Solar Project.
2.	Electrical component for 1.20 MWp Solar Project.
3.	Solar Mounting Structure and hardware for 1.20 MWp Solar Project
4.	Labour charges for civil works for 1.20 MWp Solar Project
5.	Solar Photovoltaic (PV) Inverter/s, PV Inverters 1200KW DC to AC Power Conversion Model: PRS TL 1360.
6.	Solar Photovoltaic (PV)Modules "DHOOP" Series
7.	Design and Engineering, Erection and Installation services for 1.20 MWp Solar Project.
8.	Compact Substation 0.360/33KV/1350KVOCT Components of Renewable Energy Device
9.	Testing & Commissioning Service for 1.20 MWp Solar Project.

The Assessing Officer has allowed assessee's claim of higher rate of depreciation only on two components of the Solar Plant i.e. item at Sl No.5 and Sl. No.6 in the aforesaid table. In so far as other components mentioned in the table the Assessing Officer has allowed depreciation at normal rate i.e. 10/15% and on labour charges, erection and installation services, testing and commissioning services etc. at Nil. A perusal of the components mentioned in the table, above would show that these components are integral part of the Solar Power Plant necessary for its operation. In the absence of these components the Solar Photovoltaic inverter/Modules would not be

operational in isolation. The labour charges for civil work, testing and commissioning service charges, etc. are one time charges incurred at the time of installation. The Legislature has granted higher rate of depreciation on Solar Power Plant as an incentive to the entrepreneurs to set up Solar Power units. The objective for granting accelerated depreciation would be set at naught if higher rate of depreciation is not allowed on inseparable components of Solar Power generation unit.

6. The Hon'ble Jurisdictional High Court in the case of CIT vs. CTR Manufacturing Industries Ltd. (supra) while dealing with the issue of claim of depreciation @80% on Windmill considered following two questions of law:

“(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing depreciation @80% on the expenses incurred on Power Evacuation Infrastructure, Erection and Commissioning, Line Work and Electrical Fittings without appreciating that these works did not form part of the Wind-mill and are eligible for depreciation @15% being items of Plant and Machinery?”

“(2) Whether on the facts and in the circumstances of the case and in law, the Tribunal did not err in allowing depreciation on the cost of civil foundation work @80% by ignoring the fact that civil work of foundation is a building structure and not part of the Wind-mill; hence the eligible rate of depreciation is 10% only?”

The Hon'ble High Court answered the questions in favour of the assessee by observing as under:

“3 For the subject assessment year, the Respondent- assessee had filed its return of income declaring an income of Rs.3.83 Crores, after taking into account depreciation claimed on Windmill. The Respondent- assessee had capitalized the cost of its Windmills @Rs.6.55 Crores and claimed depreciation thereon @80% i.e. Rs. 5.12 Crores. The Assessing Officer held that 80% of the depreciation is available on the basic components of the Windmill i.e. Wind Turbine Generator, Tubular Tower and Transformer. The other expenses which were capitalized as a part of the Windmill consisted of the following:-

(a) Power Evacuation Infrastructure

- (b) *Erection and commissioning charges.*
- (c) *Line work*
- (d) *Electrical items*
- (e) *MEDA charges*
- (f) *Application charges*
- (g) *Professional charges and*
- (h) *Bank charges*
- (i) *Civil Works*

were held not entitled to depreciation @80% as they are not a part of the Windmill. Thus, allowing depreciation @10% with regard to the cost of civil work foundation for the Windmill listed at (i) above and depreciation of 15% on all the other items listed at (a) to (h). Thus, the Assessing Officer disallowed the claim of Rs.92.58/- lakhs and restricted the depreciation to only Rs.4.20 Crores as against Rs.5.12 Crores claimed by the Respondent-assessee.

4 Being aggrieved, the Respondent-assessee filed appeal to the Commissioner of Income Tax(Appeals)(CIT[A]). By order dated 10th February, 2011, the CIT(A) followed the decision of the Tribunal in Poonawalla Finvest and Agro Pvt Ltd v/s Assistant Commissioner of Income Tax(118 TTJ P.68) and allowed depreciation of 80% relating to (a) to (d) mentioned in paragraph-(3) above. However, so far as items at (e) to (i) in paragraph(3) above, the CIT(A) upheld the findings of the Assessing Officer and disallowed depreciation claimed @80%.

5. Being aggrieved, both the Appellant-Revenue as well as the Respondent-assessee preferred appeal to the Tribunal, The Tribunal, by the impugned order negated the appeal of the Revenue by holding that the items listed at (a) to (d) in paragraph (3) above were necessary parts for a Windmill and supported generation of power. Thus, upheld the order dated 10th February, 2011 of the CIT(A) allowing depreciation @80% on the aforesaid items at (a) to (d) of paragraph (3) above. So far as the appeal of the Assessee with regard to other expenditure at items (e) to (h) in paragraph (3) is concerned, the Tribunal by the impugned order allowed the Respondent-assessee's appeal holding that the items (e) to (h) above relate to setting up of Windmill and consequently depreciation @80% is allowed. However, the issue was restored to the Assessing Officer for the limited purpose finding out the costs thereof which are allocable to the Windmill for the purpose of computing depreciation only on the amounts so quantified on allocation. So far as civil foundation listed at item (i) in paragraph(3) above is concerned, the impugned order of the Tribunal follows the decision of this Court in the case of the Commissioner of Income Tax-III, Pune v/s Cooper Foundary Pvt Ltd (Income Tax Appeal No.1326 of 2010 rendered on 14th June, 2011), wherein the depreciation in respect of civil foundation was allowed @80%.

6. *The Revenue being aggrieved with the impugned order of the Tribunal is in appeal before us raising the two questions for our consideration.*

7 Regarding Question

(a) *We find both the CIT(A) as well as the Tribunal have recorded a finding of fact that the items listed at (a) to (d) in paragraph(3) above form an integral part of the Windmill. Thus, entitled to 80% depreciation being a part of a Windmill. Admittedly this very question arose before the Punjab and Haryana High Court in Commissioner of Income Tax v/s M/s Eastman Impex being Income Tax Appeal No.350 of 2013 decided on 18th December, 2014 wherein an identical question arose and following the decisions of Rajasthan High Court in Commissioner of Income Tax v/s K. K. Enterprises (108 DTR 109) allowed the claim of depreciation made by the Assessee therein similar to one made here.*

(b) *Moreover, the Punjab and Haryana High Court in Eastman Impex(supra) also refers to the decision of the Mumbai Bench of the Tribunal in Trumac Engineering Co Pvt Ltd Mumbai v/s Income Tax Officer (Income Tax Appeal No. 555/Mum/2003 rendered on 27th June, 2008) wherein an identical issue has arisen and the assessee's claim therein for depreciation @100% (as in A. Y.1996-97) was allowed. Mr. Suresh Kumar for the Revenue very fairly states that no appeal has been filed by the Revenue from the decision of the Tribunal in Trumac Engineering Co Pvt Ltd(supra), as the same has been accepted.*

(c) *We find that there are concurrent finding of fact with regard to the nature of function rendered by the items listed at items (a) to*

(d) in paragraph(3) above in the Windmill in the orders of the CIT(A) and the impugned order of the Tribunal which are not shown to be perverse. This coupled with the decision of the Punjab and Haryana High Court i.e. Eastman Impex(supra) and the decision of the Tribunal in Trumac Engineering Co.Pvt Ltd(supra) which has been accepted by the Revenue and no distinguishing features are shown to us. Question No.(1) as framed does not give rise to any substantial question of law. Thus, not admitted.

8 Regarding Question (2)

(a) *It is agreed position between the parties that the issue raised herein stands concluded against the Revenue by the decision of this Court in Cooper Foundry Pvt Ltd(supra) i.e. the cost of civil foundation is to be allowed depreciation @80%.*

(b) *In the above view, Question No.2 as formulated does not give rise to any substantial question of law. Thus, not entertained."*

7. Windmill power generation and Solar power generation use reasonable source of energy for generation of power. Both are non-polluting and non-conventional power generation methods. Drawing same analogy on assessee's claim of depreciation on Solar Power Plant we hold that the assessee is eligible to claim depreciation on all inseparable components of Solar Power Plant which are necessary for its erection, operation and generation of Solar Power energy. In light of our above observation, ground No.1 to 3 of appeal deserves to be allowed. We hold and direct accordingly. The Assessing Officer is directed to allow depreciation @80% on all the components/items mentioned in table above after verification of amount claimed.

8. In ground No.4 of appeal, the assessee has assailed computation of deemed rent on a higher amount ignoring Municipal value. The contention of the assessee is that the property on which deemed rent is determined does not fall in area where Rent Control Act applies. Therefore, Municipal value of the property should be taken into consideration for determining deemed rent. We find that there is nothing on record to suggest that the property in question is beyond the area where Rent Control Act apply. In the absence of supporting evidence we deem it appropriate to restore this issue back to the file of Assessing Officer to examine the facts. In case, the property in question fall beyond the area where Rent Control Act apply during the relevant period, the Assessing Officer shall determine deemed rent based on Municipal Valuation relevant to the Assessment Year under appeal. The ground No.4 of appeal is thus allowed for statistical purpose in the terms aforesaid.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Monday the 3rd day of October, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/10/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/

Sr.Private Secretary/ITAT, Mumbai