

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

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 596/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2013-14

Sun Spintex India Ltd.,
(now amalgamated with
Harshini Textiles Pvt. Ltd.,)
504, Avinashi Road,
Peelamedu,
Coimbatore – 641 004.

The DCIT,
vs. Corporate Circle 1,
Coimbatore.

PAN: AAQCS 4328E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 19.01.2023

घोषणा की तारीख/Date of Pronouncement : 19.01.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Coimbatore-1 u/s.263 of the Income Tax Act, 1961 (hereinafter the 'Act') dated 08.06.2022. The assessment was completed by the AO u/s.143(3) of the Act vide order dated 18.03.2016.

2. The only issue in this appeal of assessee is as regards to order of PCIT revising the assessment for the reason that AO while completing assessment has allowed relief on account of depreciation at a higher rate at 80% as against eligible depreciation at 15% on windmills installed after 01.04.2012.

3. We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the AO while completing assessment allowed depreciation @ 80% on windmills as assessee has purchased second hand windmills after 01.04.2012. The PCIT was of the view that since these windmills were purchased after 01.04.2012, the AO should have allowed depreciation @ 15% instead of 80% in view of Central Board of Direct Taxes (CBDT) Notification No.15/2012 dated 30.03.2012, wherein it was stated that windmills installed on or after 31.03.2012, the eligible depreciation is at 15% as against 80% for those windmills installed before 31.03.2012. The assessee before PCIT as well as Tribunal now contended that these windmills were second hand windmills although acquired after 01.04.2012, but the seller company has installed these windmills prior to 31.03.2012 and thus by virtue of their installation prior to 31.03.2012, they are eligible for enhanced rate of depreciation @ 80% and new notification No.15/2012 that

restricts the windmills depreciation @ 15%, will not apply in the present case. The PCIT was not agreeable with the contention of the assessee and directed the AO to restrict the depreciation at 15%.

4. Before us, the assessee filed details of electric generator purchased and depreciation claimed at page 3 of its paper-book. Prima facie, it seems that these were purchased after 01.04.2012 only. The issue remains whether these windmills were installed prior to 01.04.2012 and the previous owner has claimed depreciation, this needs verification. For limited purpose, we are affirming the order of PCIT that verification is to be carried out whether these windmills were installed prior to 01.04.2012 by the previous owner or not. However, this issue is covered by the Tribunal decision in the case of Senthil Energy Pvt. Ltd., vs. ITO in ITA No.581/CHNY/2019, wherein this Tribunal has considered identical issue by observing 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 reerected 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.

5. As the issue is covered, we direct the AO to carry out limited verification whether the previous owner has installed these windmills prior to 01.04.2012 or not. In term of the above, the AO will carry out verification. The revision order stand modified accordingly.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose to the extent of modification of revisional directions.

Order pronounced in the open court on 19th January, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 19th January, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |