

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.175/Bang/2023
Assessment Year: 2012 – 13

ITO Ward-1 Bellary	Vs.	M/s. Ramgad Minerals and Mining Ltd. No.1, Balota Enclave Hospet PAN NO : AAACR8532R
APPELLANT		RESPONDENT

Appellant by	:	Shri Sankar Ganesh K., D.R.
Respondent by	:	Shri Anuj Kisnadwala, A.R.

Date of Hearing	:	26.04.2023
Date of Pronouncement	:	26.04.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is directed against order of NFAC dated 5.1.2023 for the assessment year 2012-13. The revenue has raised following grounds of appeal:

- 1. Whether the CIT(A) was justified on the facts of the case and in law, in deleting the addition towards sale of Certified Emission Reduction/Verified Emission Reduction (Carbon Credits) in view of the section 28(iv) of the Act and insertion of new section 115BBG in the Act the sale as revenue receipts from 01.04.2018, implies the intent of the Act, thus the sale of Carbon Credits needs to be treated as revenue receipts and not capital receipt.*
- 2 Whether the CIT(A) was justified on the facts of the case and in law, in deleting the addition towards Sale of Certified Emission*

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Reduction/Verified Emission Reduction (Carbon Credits) and not appreciating the fact that the appeal filed by the department on the identical issue in the assessee's own case is pending for disposal before the hon'ble High Court of Karnataka.

3. *Whether the CIT(A) was justified on the facts of the case and in law, in deleting the addition towards Sale of Certified Emission Reduction/Verified Emission Reduction (Carbon Credits) and not appreciating the fact that the appeal filed by the department on the identical issue in the case of M/s. My Home Power Ltd., Hyderabad (Civil Appeal No. 2108/2016) is pending for disposal before the Hon'ble Supreme Court of India and the issue has not reached finality by the decision of the Hon'ble Apex Court.*

4. *Any other ground that may be raised subsequently.*

2. Facts of the issue are that in the assessment year under consideration, assessee has claimed the exemption in respect of sale of carbon credits at Rs.10,94,54,915/- stating that this is a capital receipt not chargeable to tax. On appeal by placing reliance on the various decisions in assessee's own case NFAC has allowed the appeal of the assessee. Against this revenue is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. Admittedly, the issue came for consideration before this Tribunal in assessee's own case for AYs 2013-14 & 2014-15 in ITA Nos.1270 & 1271/Bang/2019 vide order dated 4.11.2020 wherein the Tribunal has held as under:-

9.6.1. We find force in the submissions of Ld.AR. We note that Ld. CIT (A) has already accepted the contention of the assessee and held that the sale of carbon Credit is a capital receipt and his finding on this aspect has attained finality because no appeal is filed by the revenue against this finding of Ld. CIT (A). Once it is accepted that the receipt in question is a capital receipt, this judgment of Hon'ble Calcutta High Court rendered in case of CIT vs. Ankit Metal & Power Ltd. (Supra) becomes applicable. We note that, Hon'ble Calcutta High Court has duly considered the judgment of Hon'ble Supreme Court rendered in case of Appollo Tyres vs. CIT (supra) and held that where a receipt is not in the nature of income at all, it cannot be included in Book Profit under Section 115JB. Hence,

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we follow this judgment of Hon'ble Calcutta High Court rendered in the case of CIT vs. Ankit Metal & Power Ltd. (Supra) and decide this issue also in favour of the assessee in both years.

Accordingly, this Ground no.2 raised by assessee for assessment year 2013-14 stands allowed.

3.1 Further in case of Atlas Export Enterprises in ITA No.1814/Mds/2013 and ITA No.117/Mds/2016, the Tribunal vide order dated 18.3.2016 has held as under:

10. We have heard both sides, perused the materials on record and gone through the orders of authorities below. We find that the issue of carbon credits receipts has been considered by the Coordinate Bench of the Tribunal in the case of My Home Power Ltd. v. DCIT (supra) and held that these receipts are capital receipts. When the matter carried has been carried by the Department before the Hon'ble High Court of Andhra Pradesh, the Hon'ble High Court confirmed the order of the Tribunal by holding as under:

"ITAT have considered the aforesaid submission and ITAT are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns." ITAT agree with this factual analysis as the Assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the Income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or Income. In the circumstances, we do not find any element of law in this appeal."

11. In view of the above decision of the Hon'ble High Court of Andhra Pradesh, we hold that the carbon credits receipts are capital in nature. So far as case law relied on by the Id. DR in the case of Apollo Tyres Ltd. v. ACIT (supra) is concerned, once there is a judgment of the Hon'ble High Court, it is bounden duty of the Tribunal to follow the judgment of the High Court. In view of the above judicial precedents, we find no infirmity in the order passed

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by the Id. CIT(A). Thus, the ground raised by the Revenue for both the assessment years are dismissed.

3.2 Further, in the case of Chemplast Sanmar Ltd. in ITA No.2807 to 2810/Chen/2017 dated 4.12.2019 the Tribunal has held as under:

22. A perusal of the provision of Section 115BBG clearly shows the intention of the legislature to bring the income on the sale of the carbon credits to tax under the special provision. It is abundantly clear that the said receipts are not brought to tax under the various Clauses of business income. The legislature's intention itself being to tax the said receipts under a special category clearly shows that the receipts in the sale of the carbon credits prior to 01.04.2018 was in fact liable to be treated as a capital receipt only. Further, it is noticed that the issue of carbon credits has already been decided by the Co-ordinate Bench of this Tribunal in the case of Ambika Cotton Mills Limited reported in I.T.A.1836/Mds/2012 dated 16.04.2013 as also in the case of Sri Velayudhaswamy Spinning Mills (P) Limited in I.T.A. No.582/Mds/2013 by following the decision of the Co-ordinate Bench of this Tribunal, Hyderabad Bench in the case of My Home Power Limited.

This being so, respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Ambika Cotton Mills Limited and the decision in the Sri Velayudhaswamy Spinning Mills (P) Limited referred to supra as also on account of the fact that the legislature has by intent providing for taxing of the receipts from the sale of carbon credits under a special provision of Section 115BBG w.e.f 01.04.2018 and as the appeals relate to the period before this date, the receipts arising to the assessee herein on the sale of carbon credits is held to be capital receipt. Consequently, the order of the learned CIT(A) and that of the learned Assessing Officer on this issue stands reversed.

Consequently, the appeals of the assessee for the Assessment Years 2011-12 and 2013-14 stands allowed.”

3.3 In view of the above orders of the coordinate benches, we hold that Carbon credits cannot be considered as an income in the assessment year 2012-13 and insertion of new section 115BBE of the Act, which was introduced from 1.4.2018 is only prospective in

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nature and cannot be applied to the assessment year 2012-13.
These grounds of revenue are dismissed.

4. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 26th Apr, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 26th Apr, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.