

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 1284/Mum/2023
(Assessment Year: 2017-18)**

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| ATE Enterprise Pvt Ltd No. 689 Veera Desai Road, Azad Nagar S.O. Andheri (W) Mumbai- 400053. | बनाम/ Vs. | Income Tax Officer, Central Circle 9(1)(1) Aaykar bhavan, M.K. Road, Mumbai- 400021. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCA6166D | | |
| (अपीलार्थी /Appellant) | | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से / Appellant by : | Shri Hitesh Jain.AR |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Manoj Kumar Sinha.DR |

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| सुनवाई की तारीख / Date of Hearing | 05/07/2023 |
| घोषणा की तारीख /Date of Pronouncement | 10/07/2023 |

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed the appeal against the order of CIT(A)/NFAC Delhi passed under section 250 of the Income Tax Act, 1961 (“the Act”).

2. The assessee has raised the following grounds of appeal:-

1. “The Learned Commissioner of Income Tax Appeals has erred in upholding the action of the Assessing Officer in disallowing Rs. 8,00,064/- representing

amount of capital WIP written off in the books of account of the appellant due to no-feasibility of the Solar Project. On the basis of facts and circumstances of the case and in law, the expenditure ought to be treated as revenue expenditure and disallowance made ought to be deleted”.

2. “ The appellant craves leave to add, alter amend and/or rescind any grounds of appeal during the course of the hearing”.

3. The brief facts of the case are that, the assessee company is engaged in the business of the trading of textile machinery, spares, accessories, graphics, pumps, industrial products and solar dish and in manufacturing of the textile spares and parts. The assessee had filed return of income for the A.Y 2017-18 on 30.11.2017 disclosing a total loss of Rs.18,70,518/-. Subsequently, the assessee has filed the revised return of income on 24.09.2018 disclosing a total loss of Rs. 21,55,708/-. The case was selected for scrutiny and the notice u/s 143(2) and u/s 142(1) of the Act are issued through ITBA Portal. In compliance to notice, the assessee has furnished the details called for on various dates. The Assessing Officer (A.O) on perusal of the Tax Audit Report clause 21(a), found that the assessee has disclosed the loss on sale of assets sold/discarded of Rs.14,30,947/- and the assessee has added back in the computation of income of Rs. 6,30,083/- and the balance amount of Rs. 8,00,064/- was written off under the head capital WIP. The A.O find that the claim is in the nature of capital expenditure and was disallowed and assessed the total loss of

Rs.13,55,644/- and passed the order U/sec143(3) of the Act dated 20-12-2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statements of facts, submissions and the findings of the AO and was not satisfied with the claim and sustained the disallowance. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the disallowance by the Assessing Officer treating as capital expenditure and whereas it represents a capital WIP written off due to non feasibility of the solar project and it's in the nature of revenue expenditure and substantiated the submissions with the financial statements. Per Contra, the Ld.DR relied on the order of the CIT(A) .

6. We heard the rival submission and perused the material on record. The sole matrix of the disputed the issue, envisaged by the Ld.AR that the CIT(A) has erred in considering the expenditure on the project as capital expenditure. Whereas, the assessee has undertaken a solar project and it was written off due to non feasibility and was debited to the profit and loss account. On perusal of the Audited financial statements at page 4 notes on accounts at Para 1.4 (d) of the Audit Report it was reported that the capital work in progress comprises of cost incurred on property plant and equipment under construction/acquisition that are one not yet ready for their intended use at the balance sheet date.

Further the as per note 11.1 of the Audited Profit & Loss account, the assessee has capitalized some expenditure and whereas in respect of the expenditure on solar project due to non feasibility was treated as “Loss on the discard Assets” and was written off. Whereas the assessee company is engaged in the business of trading of goods and has ventured into manufacturing of solar dish and due to non feasibility has claimed the deduction. The case of the assessee is that it is already engaged in the business of trading of solar dish and hence new project or manufacturing of the same item is only an extension of existing business. Accordingly, it was contended that the loss incurred on abandoning of the project is revenue in nature. We are unable to agree with the same, whereas the trading activity and manufacturing activity are two independent ventures. The risk and reward are totally different. We are of the view that the manufacturing of solar dish is a new venture undertaken by the assessee and the same cannot be treated as an extension of existing business and the loss incurred on the abandonment of the new project is capital in nature. Accordingly, we uphold the decision taken by the CIT(A) on the above discussed reason and dismiss the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10.07.2023.

Sd/-

(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 11/07/2023

Shubham Lohar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / Concerned CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai