

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH 'DB', JODHPUR**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 593/Jodh/2014  
Assessment Years: 2010-11**

ACIT, Circle-2,  
Udaipur.

(Appellant)

Versus M/s. Tirupati Microtech P. Ltd.  
1604/1610, Village Thoor,  
Udaipur.

**PAN: AA ACT5483D**  
(Respondent)

**ITA No. 252/Jodh/2016  
Assessment Year: 2011-12**

ACIT, Circle-2,  
Udaipur.

Appellant)

Versus M/s. Tirupati Microtech P. Ltd.  
1604/1610, Village Thoor,  
Udaipur.

**PAN: AANPN5358H**  
(Respondent)

**ITA No. 16/Jodh/2017  
Assessment Year: 2012-13**

ACIT, Circle-2,  
Udaipur.

Appellant)

Versus M/s. Tirupati Microtech P. Ltd.  
1604/1610, Village Thoor,  
Udaipur.

**PAN: AA ACT5483D**  
(Respondent)

**ITA Nos. 264/Jodh/2016 & 23/Jodh/2017**  
**Assessment Years: 2011-12 & 2012-13**  
**(Through Virtual Mode)**

M/s. Tirupati Microtech P. Ltd.  
C/o G.S. Punjawat & Co.,  
Chartered Accountants,  
149, Bada Bazar, Udaipur.

**PAN : AANPN5358H**

(Appellant)

Versus

ACIT, Circle-2,  
Udaipur.

(Respondent)

Assessee by : Sh. Rakesh Lodha, C.A.  
Revenue by : Ms. Meenakshi Vohra, CIT-DR

Date of hearing : 21.09.2023  
Date of pronouncement: 06.10.2023

**ORDER**

Captioned appeals by the Revenue and assessee arise out of separate orders of learned Commissioner of Income-tax (Appeals)- Udaipur pertaining to assessment years 2010-11, 2011-12 and 2012-13.

2. Since, the issues involved in these appeals are more or less identical, all these appeals were heard together and are disposed of by a consolidated order, for the sake of convenience.

ITA No. 593/Jodh/2014( Revenue's appeal for A.Y. 2010-11):

3. In ground No.1, Revenue has challenged the decision of learned first appellate authority in allowing deduction claimed under section 80IB of the Income-tax Act, 1961.

4. Briefly, the facts relating to this issue are, the assessee is a resident corporate entity, stated to be engaged in the activity of purchase of zircon sand, its grinding//crushing and sale. As stated by the Assessing Officer, zircon sand is supplied to the assessee by M/s. Indian Rare Earths Ltd., Chavara (Kerala). For the aforesaid activity, the assessee has set up two units – first one at Udaipur and the second one in Pondicherry. In so far as the Udaipur Unit is concerned, the initial year of claiming deduction under section 80IB of the Act was assessment year 1997-98 and the period of 10 year during which the assessee can claim deduction, ended in assessment year 2006-07. Whereas, the Pondicherry unit was set up in assessment year 2003-04 and initial assessment year, in which the assessee claimed deduction under section 80IB of the Act was assessment year 2003-04 and thereafter, the assessee continued to claim deduction under the said provision and assessee's claim was accepted till assessment year 2009-10. However, in the impugned assessment year, the Assessing

Officer rejected assessee's claim of deduction on the reasoning that the activity carried out by the assessee does not amount to manufacturing of products. Against the aforesaid decision of the Assessing Officer, the assessee preferred appeal before learned first appellate authority. Having taken note of the fact that identical nature of dispute was decided in favour of the assessee in the preceding assessment years, learned Commissioner (Appeals) allowed assessee's claim of deduction under section 80IB of the Act.

5. At the time of hearing, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decisions of Tribunal and the Hon'ble jurisdictional High Court in assessee's own case.

6. Learned Departmental Representative, though, agreed with the aforesaid submission of the assessee, however, she relied upon the observations of the Assessing Officer.

7. Having considered rival submissions, we find, this is a recurring dispute between the assessee and the Revenue from earlier assessment years and the issue has been decided in favour of the assessee by the Tribunal as well as Hon'ble jurisdictional High Court.

In fact, while deciding a bunch of appeals filed by the Revenue in assessee's own case in preceding assessment years, Hon'ble jurisdictional High Court in judgment dated 24.01.2018 delivered in ITA No. 20/2013 and others, has dismissed the appeals of the Revenue by stating that no substantial question of law arises. Thus, respectfully following the decision of the Tribunal and Hon'ble jurisdictional High Court, we uphold the decision of learned first appellate authority on the issue by dismissing the grounds raised.

8. In ground No.2, the Revenue has challenged the deletion of disallowance of deduction claimed towards belated payment of employees' contribution to Provident Fund (PF) and Employees State Insurance (ESI) amounting to Rs.41,165/-.

9. At the time of hearing, learned counsel appearing for the assessee fairly conceded that now the issue stands squarely covered by the decision of the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT, 448 ITR 518 (SC), hence, has to be decided against the assessee.

10. Having considered the submissions of the parties, we are of the view that the issue is no more *res integra* in view of the decision of

Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT (supra). Accordingly, we reverse the decision of learned Commissioner (Appeals) on the issue and restore the disallowance made by the Assessing Officer.

11. In ground No. 3, the Revenue has challenged disallowance of depreciation claimed in respect of wind mill and accessories at higher rate of 80%.

12. Briefly, the facts are, in course of assessment proceedings, while examining assessee's claim of depreciation on various assets, the Assessing Officer observed that it has claimed depreciation at the maximum rate of 80% in respect of evacuation charges, foundation work, transformers and installation of electrical items. After verifying the details, the Assessing Officer observed that evacuation charges were paid to M/s. Suzlon Power Infrastructure Ltd. for evacuation facilities and infrastructure created by it and the charges are non-refundable. On verifying the invoice, the Assessing Officer observed that the assessee has not acquired any asset by paying these charges. Hence, he held that the payment made on evacuation charges cannot be treated as part of assets related to wind mill and any specially

designed devices which run on wind mills. He held that depreciation claimed on investment made in foundation and transformer plinth at the maximum rate is not allowable, as they are in the nature of civil construction, hence, do not qualify for depreciation as plant and machinery. As regards depreciation claimed on electrical items and cost of installation, the Assessing Officer held that they are not parts of wind mills, hence, not eligible for higher rate of depreciation. While deciding the issue in appeal, learned Commissioner (Appeals) allowed assessee's claim of higher depreciation in respect of aforesaid items/assets by treating them as part of asset related to wind mill.

13. We have considered rival submissions and various materials on record. In so far as evacuation charge is concerned, the investment has to be made for installation of the wind mill and transmitting power/electricity generated by the wind mill to the location. Thus, as rightly held by learned first appellate authority, it is an integral part of the wind mill. That being the case, depreciation at higher rate of 80% is allowable.

14. In so far as foundation work is concerned, it is quite obvious, a strong foundation is required for installing heavy machinery in wind

mill. That being the case, it has to be treated as part of wind mill and depreciation at higher rate of 80% is admissible. The judicial precedents cited by learned counsel support this view. Accordingly, we uphold the decision of learned first appellate authority on this issue.

15. Similarly, investment made towards electrical items, components installation, such as electrical lines, have to be considered as part of wind mill, hence, depreciation at higher rate is admissible. The judicial precedents cited by learned counsel for the assessee support this view. Accordingly, we uphold the decision of learned first appellate authority on the issue. Ground raised is dismissed.

16. In ground No. 4, the Revenue has challenged allowance of additional depreciation on wind mill. The gist of Revenue's case is, assets of wind mill do not fall under clause (ii) of section 32(1) of the Act. It is further submitted that the amended provisions of section 32(1)(ia) allowing additional depreciation on plant and machinery used in generation and distribution of power is effective from 01.04.2013, hence, not applicable to any assessment year prior to assessment year 2013-14. In other words, the case of the Revenue is, prior to

assessment year 2013-14, generation of electricity did not qualify as manufacturing process.

17. We have considered rival submissions on the issue and perused materials on record. As we find, there are various judicial precedents holding that generation of electricity by wind mill amounts to production of an article or thing, hence, the asset generating electricity will qualify for additional depreciation under section 32(1)(iia). However, the contention of the Revenue that generation of electricity is considered as manufacturing activity since assessment year 2013-14 for the purpose of section 32(1)(iia), requires to be addressed. As we find, in case of *Giriraj Enterprises vs. DCIT* (ITA No. 1384 & 1385/Pune/2015), the Tribunal in order dated 23.02.2017, as per the majority view, has held that additional depreciation under section 32(1)(iia) is admissible in respect of wind mill even prior to assessment year 2013-14. Thus, respectfully following the aforesaid decision of the coordinate Bench, we uphold the decision of learned first appellate authority by dismissing the ground raised.

18. In the result, departmental appeal for A.Y. 2010-11 is partly allowed.

ITA No. 264/Jodh/2016 (Assessee's appeal for A.Y. 2011-12):

19. The only ground raised by the assessee in this appeal relates to disallowance of additional depreciation under section 32(1)(iia) of the Act. While deciding Revenue's appeal in ITA No. 593/Jodh/2014 in earlier part of the order, qua ground No. 4, we have already decided the issue in favour of the assessee. Following our decision therein, we direct the Assessing Officer to allow assessee's claim of additional depreciation. Ground raised is allowed.

20. In the result, appeal is allowed.

ITA No. 252/Jodh/2016( Revenue's appeal for A.Y. 2011-12):

21. Ground No. 1 is identical to ground No. 1 of ITA No. 593/Jodh/2014 and relates to claim of deduction under section 80IB of the Act. While deciding the issue in the earlier part of the order, we have allowed assessee's claim of deduction under section 80IB of the Act. Consistent with the view taken therein, we direct the Assessing Officer to allow assessee's claim of deduction.

22. In ground No. 2, the Revenue has challenged allowance of depreciation on various items of wind mill. The issue raised in this

ground is identical to issue raised in ground No. 3 of ITA No. 593/Jodh/2014 decided by us in earlier part of the order. Consistent with the view taken therein, we uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.

ITA No. 23/Jodh/2017 (Assessee's appeal for A.Y. 2012-13):

23. The only ground raised by the assessee in this appeal relates to disallowance of additional depreciation under section 32(1)(iia) of the Act. While deciding Revenue's appeal in ITA No. 593/Jodh/2014 in earlier part of the order *qua* ground No. 4, we have already decided the issue in favour of the assessee. Following our decision therein, we direct the Assessing Officer to allow assessee's claim of additional depreciation. Ground raised is allowed.

ITA No. 16/Jodh/2017( Revenue's appeal for A.Y. 2012-13):

24. Ground No. 1 is identical to ground No. 1 of ITA No. 593/Jodh/2014 and relates to claim of deduction under section 80IB of the Act. While deciding the issue in the earlier part of the order, we have allowed assessee's claim of deduction under section 80IB of the Act. Consistent with the view taken therein, we direct the Assessing

Officer to allow assessee's claim of deduction. Ground raised is dismissed.

25. In ground No. 2, the Revenue has challenged allowance of higher depreciation on various items of wind mill. The issue raised in this ground is identical to issue raised in ground No. 3 of ITA No. 593/Jodh/2014 decided by us in earlier part of the order. Consistent with the view taken therein, we uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.

26. To sum up, Revenue's appeal No. 593/Jodh/2014 is partly allowed. Revenue's appeal Nos. 252/Jodh/2016 and 16/Jodh/2017 are dismissed and assessee's appeal Nos.264/Jodh/2016 and 23/Jodh/2017 are allowed.

Order pronounced in the open court on 06.10.2023.

Sd/-

**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 06.10.2023

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

Assistant Registrar  
ITAT Jodhpur