IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM

I.T.A. No. 4104/Mum/2013
(Assessment Year: 2009-10)

I.T.A. No. 4105/Mum/2023
(Assessment Year: 2008-09)

Dy. CIT-(2(3)(1) 502, Aayakar Bhavan, M.K. Road, Mumbai - 400020.	Vs.	**Navin Fluorine International Ltd.** Office No. 602, Natraj by Rustomjee, Sir Mathuradas Vasanji Road, Andheri East, Mumbai-400069 **PAN : AABCP0464B**
Appellant)	:	**Respondent**)

Revenue/Respondent by	:	Ms. Aarti Vissanji & Amod Prabhudesai, CA
Appellant/Assessee by	:	Shri S. Srinivasu, CIT-DR
Date of Hearing	:	06.05.2024
Date of Pronouncement	:	08.05.2024

O R D E R

Per Padmavathy S, AM:

These two appeals by the Revenue are against the orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeals Centre, Delhi [for short 'the CIT(A)'] for the AYs 2008-09 & 2009-10 both dated 03.05.2023. The issues contended in both these appeals are common and therefore they were heard together and disposed off through this common order.

2. **The brief facts pertaining to AY 2008-09**:- The assessee is engaged in the business of manufacturing and treading of chemicals filed the return of income for AY 2008-09 declaring a loss of Rs. 4,74,05,456/-. The case was selected for scrutiny and assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') dated 08.12.2010 determining the loss at Rs. 2,93,96,880/-. The disallowance of Rs. 1,79,73,000/- was made on account of section 14A, Rs. 27,777/- was disallowed on account of depreciation on software and interest expense of Rs. 7800/- was also disallowed. The assessee challenged the assessment order before the CIT(A) who vide order dated 16.11.2011 partly allowed the appeal in favour of the assessee. Both the assessee and the revenue filed appeal before the Tribunal against the said order of the CIT(A). The Tribunal vide its order dated 09.08.2017 passed the order partly allowing the assessee's appeal and dismissing the appeal of the Revenue. Before the Tribunal, the assessee raised the additional ground with regard to the income from sale of Certified Emission Reduction (CER) amounting to Rs.16,20,99,857/- should be treated as capital receipt and not taxable. The Tribunal admitted the additional ground and held that the issue needs to be decided by the AO afresh taking into account the various contentions of the assessee. The Assessing Officer (AO) pursuant to the order of the Tribunal passed the order under section 143(3) r.w.s. 254 wherein the AO did not accept the claim of the assessee that the sale of CER is a capital receipt. The assessee preferred further appeal before the CIT(A) against the order of the AO. The CIT(A) allowed the appeal in favour of the assessee by holding that the sale of CER is a capital receipt not chargeable to tax by relying on the various decisions of the High Courts and the Tribunal. The Revenue is in appeal against the order of the CIT(A).

3. The ld. DR submitted that in the light of insertion of section 158BBG, the intention of the legislature is clear that the income from sale of CER should be taxed. The ld DR accordingly supported the order of the AO.

4. The ld AR on the other hand submitted that the Co-ordinate Bench in assessee's own case for AY 2010-11 to 2013-14 have been consistently holding that the income from sale of CER is a capital receipt. Therefore the ld AR submitted that the issue is already covered by the said decision and that the CIT(A) has rightly allowed the claim of the assessee.

5. We have heard the parties and perused the material on record. We noticed that the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2011-10 & 2011-12 (ITA No.5301/Mum/2014 & 6491/Mum/2018 dated 24.05.2022) has considered the issue on taxability of sale of CER and held that

> *"14. The assessee company is engaged in the business of manufacturing and trading of chemical and refrigerant gases. One of the gases produced by the assessee company is HCFC-22 and during the process, by-product gas HFC-23 is generated which has global warming potential (CDM project). As per Kyoto Protocol, production of gases which are responsible for global warming makes the business entity entitled to avail CER i.e Certified Emission Reduction. On implementation of the CDM project, the assessee company has generated CERs which was sold to various entities. The A.O has treated the profit arisen to the assessee on sale of carbon credit of Rs.69,71,56,345/- as revenue receipt.*
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> *15. On appeal, the ld. CIT(A) stated that since the same related to world environment concern the sale proceeds received on sale of CER is capital receipt not chargeable to tax. The relevant part of the decision of CIT(A) is reproduced as under:*

"The assessee company is engaged in the business of manufacture and trading of chemicals and refrigerant gases. One of the gases produced by the assessee company is HCFC-22 and during the process, a by-product gas HFC-23 is 'generated which has global warming potential (COM Project). As per Kyoto protocol, production of gases which are responsible for global warming makes the business entity entitled to avail CER i.e. Certified Emission Reduction. On implementation of the COM Project, the assessee company has generated CERs which are sold to various entities in Annex. I Countries. Since the same relates to world environment concern the sale proceeds received on sale of CER is a capital receipt not chargeable to tax. Reliance is placed on the following legal decisions:

(a) My Home Power Ltd. V/s. DCIT (Hyderabad ITAT) (2012) 81 DTR 173. Note: Affirmed by Hon. High Court (365 ITR 82.)

(b) Pr. CIT V/s. Rajasthan State Mines & Minerals Ltd. (Rajsthan High Court) (13.10.2017) (ITA No. 151 of 2016).

(c) CIT V/s. Subhash Kabani Power Corporation Ltd. (Karnataka High Court) (2016) 137 DTR 305.

(d) Aditya Birla Nuvo Ltd. & ANR V/s. DCIT & ANR (Mumbai ITAT) (2015) 45 CCH 0222.

(e) DCIT V/s. Binani Industries Ltd. (Kolkata ITAT) (2016) 137 DTR 185.

(f) ACIT V/s. L.H. Sugar Factory Ltd. (Lucknow ITAT "B" Bench) (2016) 46 CCH 354.

(g) Arun Textiles P. Ltd. V/s. DCIT (Chennai ITAT) (2015) 68 taxmann.com 434.

(h) ITO V/s. Perpetual Energy Systems Ltd. (Hyderabad ITAT) (2015) 43 CCH 176.

(i) ACIT V/s. Intex (Chennai ITAT) (2015) 154 ITD 365.

(j) DCIT V/s. Sree Rayalaseema Green Energy Ltd. (Hyderabad ITAT) (2014) 58 taxmann.com 62.

(k) India Dyeing Mills Pvt. Ltd. V/s. ACIT (Chennai ITAT) (2014) 41 CCH 454.

(l) Arun Textiles P. Ltd. V/s. ACIT (Chennai ITAT) (2014) 58 taxmann.com 223.

(m) Adisankara Spinning Mills P. Ltd. V/s. DCIT (Chennai ITAT) (2014) 41 CCH 327/67 SOT 175.

(n) Ambika Cotton Mills Ltd. V/s. DCIT (Chennai ITAT "C" Bench) 27 ITR (Trib) 44/61 SOT 0031.

(o) Sri Velayudhaswamy Spinning Mills (P) Ltd. V/s. DCIT (Chennai ITAT) (2013) 40 Taxmann.com 141.

(p) Shree Cement Ltd. V/s. Addl. CIT (Jaipur ITAT) (2014) 152 ITD 561.

4.5.1.2 Further, in assessee company's own case for the immediately preceding assessment year i.e. 2010-11, the then Ld. CIT(A) has held that the amount received on sale of CER is a capital receipt not chargeable to tax.

4.5.1.3 In view of the above, it is submitted that, it should be held that amount received on sale of CER of Rs.69,71,56,345/- is a capital receipt not chargeable to tax and hence, the addition made should be deleted in its entirety.

4.5.2 ***Decision***

In my considered view, Tribunal's including jurisdictional ITAT, Mumbai have held that the Carbon Credit is in connection with protection of world environment and accordingly, does not relate to the business. Accordingly, amount received towards sale of Carbon Credit is a capital receipt not chargeable to tax. Following the principles laid down by the above decisions, including that of jurisdictional ITAT, I hold that amount received on sale of CER of Rs.69,71,56,345/- is a capital receipt not chargeable to tax. Accordingly, this ground of appeal is allowed."

16. During the course of appellate proceedings before us the ld. D.R has placed reliance on the order of A.O. The ld. Counsel contended that identical issue on similar facts has been adjudicated by the Hon'ble Bombay High Court in favour of the assessee i.e Carbon Credit Entitlement is capital receipt not chargeable to Income tax i.e Pr.CIT VS. Dodson Lindblom Hydro Power P. Ltd. (Bombay High Court) 27.02.2019 (ITA No. 1820, 1821 & 1840 of 2016).

17. With the assistance of the ld. Representative we have gone through the decision of Hon'ble Bombay High Court as referred supra. The relevant part of the decision is reproduced as under:

> *"3. Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007-2008. Revenue has urged the following questions for our consideration :-*
>
> *(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?*
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?*
>
> *4. Though two questions are framed, singular issue is whether the receipts of the Assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore not liable to tax. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of Commissioner of Income Tax v/s. My Home Power Ltd reported in (2014) 365 ITR 82 (AP) holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of Commissioner of Income Tax v/s, Subhash Kabini Power Corporation Ltd, reported in (20161 385 ITR 592 (Karn) and followed by Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of Principal Commissioner*

of Income Tax v/s. LH Sugar Factory Pvt. Ltd reported in (2017} 392 ITR 568 (All)).

5. In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence, not entertained. The Income Tax Appeals are dismissed."

After taking into consideration the detailed finding and judicial decision referred in the order of the ld. CIT(A) and following the decision of Hon'ble Bombay High Court as supra we don't find any merit in the appeal of the revenue. Therefore, this ground of appeal of the revenue stand dismissed.

18. The appeal of the revenue stand dismissed."

6. Facts pertaining to AY 2008-09 and AY 2009-10 are identical and therefore in our considered view, the above decision of the Co-ordinate Bench that income from sale of CER is not taxable, is applicable for the years under consideration also. Accordingly we see no reason to interfere with the decision of the CIT(A) for AY 2008-09 and 2009-10.

7. In the result, appeals of the Revenue in ITA No.4105 & 4104/Mum/2023 are dismissed.

Order pronounced in the open court on 08-05-2024.

Sd/-	***Sd/-***
(PAVAN KUMAR GADALE)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai

4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai