

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

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकर अपील सं. ITA No.1261/Chny/2017
(निर्धारणवर्ष / Assessment Year: 2013-14)

DCIT Corporate Circle-1 Coimbatore.	बनम/ Vs.	M/s. KDS Wind Farms Private Limited 75/1, Dr. Ansari Street, Pollachi-642 001.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECK-7320-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं./ ITA No.1247/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2014-15)

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3. आयकर अपील सं./ ITA No.1248/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)

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4. आयकर अपील सं./ ITA No.1249/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

M/s. KDS Wind Farms Private Ltd. 75/1, Dr. Ansari Street, Pollachi-642 001.	बनम/ Vs.	DCIT / ITO Corporate Circle-1, Corp. Ward-2 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECK-7320-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri T. Banusekar (Advocate)-Ld.AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	16-05-2024
घोषणा की तारीख / Date of Pronouncement	:	03-06-2024

आदेश / ORDER

Per BENCH:

1. ITA No.1261/Chny/2017 for Assessment Year (AY) 2013-14 is a recalled matter since the revenue's appeal was disposed-off by Tribunal vide order dated 27-11-2018. However, the assessee preferred misc. application (MA) against the same vide MA No.100/Chny/2019 which was disposed-off vide order dated 29-11-2023. In the order, Tribunal had restored the view of Ld. AO qua assessee's claim of deduction u/s 80IA and allowed the appeal of the revenue. The assessee submitted that there were factual errors. Concurring with the same, the bench recalled the order on this issue and restored the appeal. Accordingly, the appeal has come up for fresh hearing before us. The only issue that is to be decided in the revenue's appeal is assessee's claim of deduction u/s 80IA. The relevant grounds read as under: -

1. The order of the Id. CIT(A), Coimbatore is against the facts and circumstances of the case and is erroneous by law.
2. The learned CIT(A) erred in holding that the assessee company is eligible for deduction u/s.80IA since the same plant and machinery installed by M/s. Kalyani Distribution Services is still continued with the assessee company.
3. The learned CIT(A) erred in allowing the assessee's claim for deduction u/s.80IA by holding that there is no splitting up or reconstruction of a business, when the firm which was dealing with pharmaceuticals as well as windmill division was subsequently got divided into two entities one dealing with pharmaceuticals and the other entity dealing with windmill.
4. The learned CIT(A) erred in not taking into consideration the Hon'ble ITAT's decision in the case of M/s. Armstrong Knitting Mills Pvt. Ltd cited in ITA No.113/Mds/2012 wherein on a similar set of facts, the Hon'ble ITAT held that "Therefore, as per sub-clause (ii) of section 80IA(3), once the machinery or plant previously used for 'any purpose' IS transferred to a new business, the concerned undertaking is not entitled for deduction.

2. The other appeals are assessee's appeal having identical issue of claim u/s 80IA. It is admitted position that facts as well as issues are quite identical in all these appeals.

Assessment Proceedings for AY 2013-14

3.1 The material facts are that the assessee is stated to be engaged in wind energy generation and sale. The assessee company was formed on 23-03-2012 and it started operating during financial year 2012-13. This was the first year of business operations. In the return of income, the assessee claimed deduction u/s 80IA for Rs.129.40 Lacs.

3.2 Upon perusal, Ld. AO noted that windmills were not purchased by the assessee and they were not first-hand machinery. The windmills were being used previously by another partnership firm by the name M/s Kalyani Distributions Servicers (KDS) having PAN AAIFK-6480-E. This firm was having business in Pollachi and it was engaged in pharmaceutical business. This firm purchased the windmills and started windmill division in the year 2007 and commenced production during AY 2008-09. This firm started claiming deduction u/s 80IA from AY 2009-10. It had 4 partners with specified profit-sharing ratio.

3.3 It was further noted by Ld. AO that KDS was split on 10-03-2012 into two entities. One entity continued pharmacy business and the other entity had the windmill business exclusively. The pharmacy business was continued by the firm with the same name but with different PAN AAMFK-0290-Q which was assessed at Coimbatore. This firm had same 4 partners but with different profit-sharing ratio.

3.4 The other entity was a firm with the same name exclusively having windmill business and it existed for a short period. Thereafter, it was converted into a firm by the name M/s KDS Wind Farms (KWF) who had

7 partners. On 23-03-2012, KWF was formed into a company by the name KDS Wind Farms Pvt. Ltd. (present assessee) having PAN AAECK-7320-E.

3.5 In the above factual background, Ld. AO alleged that the assessee violated sub-clause (i) and (ii) of Sec.80IA(3) for the reason that the assessee was formed by splitting up / reconstruction of a business already in existence namely the firm with PAN AAIFK-6480-E. There was also a change in partners and shareholding ratio. The windmill was previously used by the firm which also claimed depreciation on windmills. Thea assessee also do not satisfy the criteria as specified in Sec.80IA(5) for the reason that initial claim u/s 80IA(5) was made by KDS identified as PAN AAIFK-6480-E. That firm also claimed depreciation.

3.6 The assessee submitted that KDS was converted to the assessee company with the same partners as shareholders and in same profit-sharing ratio. It was also stated that M/s Indo Shell Cast Private Ltd was a partner in the firm KDA and subsequently became a director in the assessee The assessee submitted that there was no splitting or reconstruction as alleged and KDS went into a reconstitution change and therefore claim u/s 80IA was in order. However, alleging violation of Sec. 80IA(3) and (5), Ld. AO denied impugned deduction to the assessee.

3.7 The Ld. CIT(A) upheld the claim of the assessee on the ground that KDS was constituted on 19-08-2007 and it installed windmills. The firm was renamed as KWF and was subsequently converted into a Private Ltd. company. The eligible business, being the windmill, installed by the firm was continued by the Private Ltd. Company. It was not formed by splitting up or reconstruction of a business already in existence. The same plant and machinery as installed by the firm still continued with the

assessee and therefore, the conditions to claim the impugned deduction was fulfilled. Aggrieved, the revenue is in further appeal before us.

3.8 The Ld. AO, in its report, has submitted that the decision of Ld. CIT(A) is not acceptable considering the fact that the windmills were purchased in firm's name which was transmitted to Private Ltd. Company. Originally KDS was dealing with pharmaceutical business as well as windmill business. The firm split into two entity and only the windmill division got converted into Private Ltd Company whereas the pharmacy business was transferred to another entity. Therefore, the windmill as purchased by KDS was not directly transferred to the assessee but it was transferred through KWF. Moreover, the pharmacy business was not transferred to assessee. Therefore, the conditions of Sec.80IA were not fulfilled. It has been stated that the decision of Chennai Tribunal in **M/s Armstrong Knitting Mills Pvt. Ltd (ITA No.113/Mds/2012)** would apply to the facts of the case.

3.9 In assessment orders for AYs 2014-15, 2015-16 & 2017-18, Ld. AO denied impugned deduction to the assessee on similar allegations. The first appellate orders were passed on 11-09-2023 wherein Ld. CIT(A) relied on the order of Tribunal for AY 2013-14 to dismiss the claim of the assessee. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. During hearing, Ld. AR has placed on record sequence of events leading to formation of present assessee as under: -

No.	Date	Name of the firm / company	Partners/ shareholders	Nature of business	Remarks	Page no.Ref
1.	19.08.2007	Kalyani Distributions Services	V. Narayanan V.Chinnaiah RM Vasanthi T.Ramasamy	1. Wholesale Pharmaceutical Distribution 2. Windmill		PAN: AAIFK6480E (Refer pg.2 of asst.order of 2013-14)
2.	29.09.2007	Kalyani Distributions Services	V. Narayanan V.Chinnaiah RM Vasanthi	1.Manufacturing of Pharmaceutical formulations and	Modification of business	PAN: AAIFK6480E (Refer pg.2 of asst.order of 2013-14)

			T.Ramasamy	wholesale pharmaceutical distribution 2. Windmill		
3.	11.03.2012	Kalyani Distributions Services	V. Narayanan V.Chinnaiah RM Vasanthi T.Ramasamy	1.Wholesale distribution of chemist, drugs and pharma 2. Additional business – to act as stockiest, super stockiest, C&G agents and manufacturer of general medicines.	New firm constituted. No reference to earlier partnership deeds in name of Kalyani Distributions Services	(Refer pages 18 to 23 more particularly to page 20 of first para of paper book. PAN:AAMFK0290Q (Refer pg.2 of asst.order of 2013-14
4.	11.03.2012	Deed of Reconstitution of Partnership of KDS Wind Farms (Formerly known as Kalyani Distribution Servicers)	V.Ramanathan V. Narayanan V.Chinnaiah RM Vasanthi T.Ramasamy RM Vasanthi N.Bhuvanewari C.Kannathal	1.To run windmill 2.All business activities in line of non-conventional energy	Reconstitution of existing firm with admission of new partners and change of name. Reference to first deed dated 19.08.2007 and earlier expansion of business to windmill mentioned.	Refer pages 24 to 30 more particularly pages 26 & 27 of paper book. PAN AAIFK6480E (Refer pg.2 of asst.order of 2013-14)
5	23.03.2012	KDS Wind Farms P. Ltd. (Incorporated under Part IX of Companies Act, 1956)	V.Ramanathan V. Narayanan V.Chinnaiah T.Ramasamy RM Vasanthi N.Bhuvanewari C.Kannathal	Wind energy generation and sale	MOA refers to first deed dt,19.08.2007 and deed dated 11.03.2012 for change in name and admission of partners	Refer pages 33 & 34 of paper book. PAN AAIECK7360E (Refer pg.2 of asst.order of 2013-14)

5. The Ld. AR explained that initially, M/s Kalyani Distributions Servicers (KDS) was formed with 4 partners having specified profit-sharing ratio. This firm was engaged in wholesale pharmaceutical distribution and also in windmill and it was assessed to tax under PAN AAIFK-6480-E.

On 29-09-2007, there was modification in the existing business and the same partners continued in the firm. It was submitted that the assessee intended to venture into the manufacturing of pharmaceutical

formulations and therefore, the aforesaid modification of business was done.

On 11-03-2012, a new firm was constituted with the same name and with same partners which was separately assessed to tax under PAN AAMFK-290-Q. The Ld. AR submitted that it was altogether a new firm and it had nothing to do with erstwhile firm with the same name. The partnership deed had no reference to earlier partnership deeds.

On 11-03-2012, there was deed of reconstitution of partnership of KDS wind farms (formerly known as Kalyan Distribution Servicers). The reconstituted firm had 7 partners and this firm was to run windmill. By way of this event, there was reconstitution of existing firm with admission of new partners and change of name. The aforesaid deed has reference to first deed dated 19-08-2007. This firm is stated to be assessee under PAN AAIFK-6480-E.

Finally, on 23-03-2012, the assessee entity was formed under Part IX of the Companies Act. The 7 partners became shareholders and this entity was engaged in wind energy generation and sale. The Ld. AR submitted that Memorandum of Associates refers to first deed dated 19-08-2007 and deed dated 11-03-2012 for change in name and admission of partners. This new corporate entity is the present assessee and assessed to tax under PAN AAECK-7320-E.

To support the same, Ld. AR has placed on record, relevant documents and copies of deeds etc. The Ld. AR also relied on various decisions to support the submissions that conversion of firm into company would not amount to reconstruction.

6. After due consideration and on the basis above documents and submissions, it is quite apparent that lower authorities have not

appreciated the aforesaid sequence of events in correct perspective. From the perusal of above documents, it would appear that there exist two separate firms with the same name and same partners. Therefore, with a view to crystalize the facts in correct perspective and to enable Ld. AO to bring on record correct factual matrix, we set aside the impugned orders for all the years and restore this issue back to the file of Ld. AO for fresh adjudication after affording an opportunity of hearing to the assessee. The Ld. AO may examine the claim of the assessee in terms of aforesaid documents and all other relevant material / facts. The assessee is directed to supply requisite documents and substantiate its claim. All the issues are kept open.

7. All the appeal stands allowed for statistical purposes.

Order pronounced on 3rd June, 2024

Sd/-	Sd/-
(MANU KUMAR GIRI)	(MANOJ KUMAR AGGARWAL)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 03-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Salem/Pollachi
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF