



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

DR. DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 99/Rjt/2023 & 169/Rjt/2024

Assessment Year: (2015-16 & 2017-18)

Friends Salt Works And Allied Industries Maitri Bhavan, Plot No. 18, Sector-8, Gujarat- 370201	Vs.	ACIT, Circle-1, Gandhidham Plot No. 20a, Sector-8, Behind KPT AO Building, Gandhidham-Kutch Gujarat - 370201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAFF2067N		
(Appellant)		(Respondent)

Appellant by : Shri K. C. Thacker, Ld. A.R.
Respondent by : Shri Sanjay Puglia, Ld. (CIT) DR
Date of Hearing : 06/10/2025
Date of Pronouncement : 02/01/2026

आदेश / ORDER

Per Dr. Dinesh Mohan Sinha, JM:

Captioned appeals filed by the assessee, pertaining to Assessment Year (AY) 2015-16 & 2017-18, is directed against the order passed by the Commissioner of Income Tax [(in short "Ld.CIT(A)"] vide order dated 17.02.2023, which in turn arise out of assessment orders passed by Income Tax Department/Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short "the Act"), vide order dated 29.12.2019.

2. Grounds of appeal raised by the assessee are as follows (ITA No. 99/Rjt/2023-A.Y. 2015-16) :

"1. The learned CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 3,63,690/- being the depreciation claimed on "providing easy and free access & keeping the area vacant surround lease land" where wind mill of the appellant is installed.



2. *The Learned CIT(A) has further erred in law and on facts in confirming addition of Rs. 2,77,06,992/-being net amount received on sale of carbon credit ignoring the decision of jurisdictional high court cited before him.*

3. *The Learned CIT(A) has also erred in law and on facts in confirming disallowance of Rs. 87,29,720/-being losses suffered on washing of salt.*

4. *The Learned CIT(A) has further erred in law and on facts in confirming disallowance of Rs. 19,415/-being interest on late deposit of tax deducted at source into the Government account.*

5. *On the facts and in the circumstances of the case and in law the learned CIT(A) ought not have confirm disallowance of Rs. 3,63,490/- being the depreciation claimed on "providing easy and free access & keeping the area vacant surround lease land", Rs. 87,29,720/- being losses suffered on washing of salt, Rs. 19,415/- being interest on late deposit of tax deducted at source into the Government account and addition of Rs. 2,77,06,992/- being net amount received on sale of carbon credit.*

6. *It is therefore prayed that disallowance of Rs. 3,63,490/- being the depreciation claimed on "providing easy and free access & keeping the area vacant surround lease land", Rs. 87,29,720/- being losses suffered on washing of salt, Rs. 19,415/-being interest on late deposit of tax deducted at source into the Government account and addition of Rs. 2,77,06,992/- being net amount received on sale of carbon credit as confirmed by the CIT(A) may kindly be deleted.*

7. *Your appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing.*

3. Grounds of appeal raised by the assessee are as follows (ITA No. 169/Rjt/2024-A.Y. 2017-18) :

"1. The Learned CIT(A) has erred in law and on facts in confirming addition of sale proceeds of Rs.6,88,97,500/- and of Rs.1,08,280/- received on sale of renewable energy certificates and voluntary carbon units both of which popularly known as carbon credit.

2. The Learned CIT(A) has further erred in law and on facts in ignoring the decision of Jurisdictional High court of Gujarat in the case of Principal



CIT, Vadodara-1 Vs. Alembic Ltd., Tax Appeal No. 553 & 554 of 2017 (Guj) which is squarely applicable to the fact of the case.

3. The Learned CIT(A) has also erred in law and on facts in not appreciating detailed submission made by the appellant and passing a non-speaking order.

4. On the facts and circumstances of the case and in law, the learned CIT(A) ought not have confirm the addition of Rs.6,90,05,780/- (6,88,97,500+ 10,87,808) realized on sale of carbon credit and ought to have follow the decision of Jurisdictional High court of Gujarat which is squarely applicable to the issue under dispute.

5. It is therefore prayed that the addition of Rs.6,90,05,780/- as confirmed by the CIT(A) may kindly be deleted.

6. Your appellant craves leave to add, alter, amend, modify or withdraw any ground of appeal at the time of hearing.”

We shall take ITA No. 99/Rjt/2023 & ITA No. 169/Rjt/2024. Since, the issue involved in both the appeal are common and identical. Therefore, these appeal are being disposed of by this consolidated order for the sake of convenience the grounds as well as facts, narrated in ITA No. 99/Rjt/2023 (AY. 2015-16) has been take into consideration for deciding the appeal.

In ITA No. 99/Rjt/2023 the assessee informs the bench that assessee does not want to press Ground No. 4, 5 and ground no. 6 is the repetition of ground no. 5. Therefore, we dismissed these grounds as not pressed. And ground no. 7 need not adjudicated.



4. Facts of the case (ITA No. 99/Rjt/2023 – AY-2015-16)

The Appellant filed Original Return of Income on 30.09.2015 and Revised Return of Income on 06.10.2016 The same was processed u/s. 143(1) of the Act on the total

income returned. In the course of Assessment Proceedings the learned AO called upon the appellant to explain as to

*Why depreciation claimed on the land cost of Wind mill should not be disallowed based on disallowance made in the A.Y. 2014-15,

*Why the REC Income and VCU Income which was deducted from the statement of total income considering it as a capital receipt should not be added back to total income by treating it as a business receipt,

*Why the excessive losses shown in washing of salt should not be added back to the Income and why interest paid on late deposit of TDS and debited under the head Interest expenses should not be disallowed.

Total income of the assessee assessed as under:



I	Income from business		
	As per statement of income		Rs.13,78,86,241/-
	Addition disallowances		
	i) Delayed payment of EPF	1,46,641/-	
	ii) Disallowance of depreciation on windmill	3,63,490/4	
	iii) Addition of carbon credits	2,77,06,992/4	
	iv) Value of excessive washing loss	87,29,720/4	
	v) Addition on account of interest on TDS	19,415/-	Rs.3,69,66,258/-
			Rs.17,48,52,499/-
			NIL
II)	Income from capital gains (STCL of Rs.5914/- allowed to be carried forward)		
III)	Income from other sources		
	Dividend income		Rs.120/-
	Gross total income		Rs.1,74,852,619/-
	Less: unabsorbed depreciation of AY 2014-15 As per order u/s.143(3) dtd. 29.12.2016		(-)Rs.1,87,45,050/4
			Rs.15,61,07,569/-
	Less: deduction under chapter VI		
	i) 80GGC Rs.25,00,000/-		Rs.8,84,94,112/-
	ii) 80IA Rs.8,59,94,112/-		
	Total income		Rs.6,76,13,457/-
	Rounded off to		Rs.6,76,13,460/-

5. That the assessee filed an appeal against the order of AO dated 17.02.2023 before the Ld.CIT (A) and the addition made by AO was confirmed by Ld. CIT(A). with the following remarks:

1. The AO has correctly disallowed depreciation claimed @ 80% on the land cost of the wind mill as said land is on lease from State Government and the assessee is not the owner of the land. Thus the addition made by the A.O. is sustained. It cannot be allowed as depreciation.

2. That Ld. CIT(A) confirmed the AO's contention that sale proceeds of CERs are revenue receipts because these are closely connected with carrying out business activities and are taxable u/s 28(iv) of the Act, as the benefit arises during the course of carrying on business. It has already been placed on record that the department has not accepted the decisions quoted by the assessee.



3. Loss @10% is considered to be justified for the year under consideration and excess washing / handling loss was disallowed. In the case of the appellant and other two group, concern namely Kutch Salt and allied industries and M/s Oswal salt and chemicals industries, the washing / handling loss @10% Allowed, on similar basis the finding of the AO is confirmed and reasonable as the AO has used scientific data to infer & restrict the loss.

6. That the assessee has challenged the legality and validity of impugned order dated: 17.02.2023 by moving of an appeal before this Tribunal.

(i) During the course of hearing, the Ld. AR submitted that the paper book (containing 136 pages) written submission and supporting by judgements. The Ld. AR prayed that the addition made by the AO and confirmed by the CIT(A) may kindly be deleted.

(ii) On the contrary, the Ld. DR relied on the order of the Ld.CIT(A).

7. We have heard rival contention of both the parties and perused material available on record. Ground No. 1, 2, 3 are to be adjudicated.

Ground – 1

The issue is regarding the disallowance of depreciation on Wind Mills of Rs. 3,63,490/-. In respect of providing easy & free access and keeping the area vacant surrounding lease land where wind mill of the appellant is installed. The AO states that the appellant has claimed depreciation on land which belongs to Suzlon Gujarat Wind Park Ltd. who has taken said land on lease from Government of Gujarat. The appellant submitted that they have not claimed depreciation on land but have paid consideration towards easy and free access facility to reach the windmill which was provided to them by Suzlon Gujarat Wind Park Ltd. The



appellant also relied upon the decision of Hon'ble Bombay High Court in the case of CIT Vs Infrastructure Leasing and Finance Service Ltd. 69 Taxman 20 (Bom) wherein on the similar facts of the case depreciation was allowed @ 80% on the consideration paid for easy and free access facility to reach the Wind mill i.e. temporary approach road. The AO has disallowed of Rs. 3,63,490/-.

The assessee has claimed depreciation on Approach Road to Wind Mill of Rs. 3,63,690/-(being 80% of closing W.D.V. Rs. 4,54,613/- of last year) that depreciation was claimed on the amount paid for Providing easy and free access and keeping the area of Land to be vacant surrounding our Proposed transfer of lease/sub-lease land at Village where Windmill is installed i.e. Temporary Approach Road.

The learned AO has dealt with this issue in paragraph 5 of the impugned order. The depreciation on land cost was not allowed due to that the assessee was not the owner of land, following the disallowances made in the previous assessment year 2014-15, and the Ld. CIT(A) has approved the action of AO on the ground that the assessee was not the owner of land and the land was given on lease by the state government.

The assessee submitted Copy of Profit & Loss Account which is part of Audit Report in Form No. 10CCB with regard to deduction claimed U/s. 801A of Income Tax Act are enclosed.

Ledger Account of following expenses of Salt Division:

(a) Salt Washing (b) Salt Production (c) Hajri Majdoori (d) Repairs & Maintenance (with relevant sub-ledger) (e) Transportation (f) Tele-Communication (g) Travelling (h) Vehicle Fuel (i) Finance Expenses (with relevant sub-ledger) (j) Hospitality;



The submission of the assessee that the depreciation claimed on land cost but on the cost paid for use of the land for easy and free access to the Wind Mill and for keeping the area vacant surrounding the lease land location of Wind Mills i.e. temporary approach road. The appellant invite the attention towards the case of CIT Vs Infrastructure Leasing & Financial Service Ltd. 69 Taxman.Com 20 (Bombay) wherein issue under consideration has been extensively dealt by the Hon'ble High court and decided in favour of the assessee. Relevant portion of the said decision is reproduced herein below for your kind perusal: -

"5(c) Besides we find that all the items i.e. (1) Temporary approach Road (2) Central Control Room/Store (3) 33 KV Transformer Yard (4) 33 KV Grid Line (5) Metering Yard (6) Vacuum Circuit Breakers (7) Adtl. Meeting Yard and (8) Earth Pit, were found as fact by the Tribunal as being necessary for the setting up and running of the windmill.

5(d) The Temporary approach Road is the one item on which Mr. Pinto states that no depreciation could be allowed. According to Mr. Dalal this claim has been allowed by the Tribunal as it would be necessary for setting up a windmill and would be included in the cost of the windmill. In fact, the impugned order of the Tribunal recorded a finding of fact to the above effect. Further this Court on almost identical facts in CIT v. CTR Mfg. Industries Ltd. [Income Tax Appeal No.2125 of 2013 rendered on 1st March, 2016] has dismissed the Revenue's Appeal from the order of the Tribunal allowing the claim for depreciation at the full rate on windmills. In the above view, the question as formulated does not give rise to any substantial question of law as it is essentially a finding of fact which is not shown to be perverse. Thus, the question is not entertained".



The assessee also relied the decision rendered by hon'ble ITAT, Rajkot Bench, Rajkot in the case of ACIT-Gandhidham Circle, Gandhidham Vs Shri Vasant Manji Thakker in ITA Nos. 442 & 443/RJT/2016, wherein on the similar set of fact depreciation on approach road to wind mill was allowed by hon'ble bench by observing that possession of lease right and access to the windmill turbine/generator has to be installed is critical. Unless this right to access is acquired by the agency it can't move in its machinery and equipment to install the windmill turbine hence booking expenses in these counts on the cost of assets per se is not only reasonable but it essential for proper accountancy.

We have heard the rival contention of both the parties and perused material available on record. We note that assessee has claimed depreciation on Wind Mills of Rs. 3,63,490/-. During the course of argument the assessee has relied on:-

(i) Commissioner of Income-tax vs. Infrastructure Leasing & Financial Services Ltd.* (High Court of Bombay)

“Prior to insertion of proviso to section 36(1)(iii) by Finance Act, 2003, with effect from 1-4-2004, there was no prohibition to claiming interest paid in respect of borrowings for acquisition of capital assets till such time it is first put to use in subject assessment year”

“Temporary approach road, central control room/store, Transformer yard, Grid line, metering yard, vacuum circuit breakers, additional meeting yard and earth pit, being necessary for setting up and running windmill, would be eligible for depreciation as windmill at rate of 100 percent”



(ii) ACIT vs. Shri Vasant Manji Thakker

The CIT(A) has not allowed the claim of depreciation on wind mill after placing reliance on the decision of the jurisdictional High Court in the case of CIT vs. Parry Engineering & Electronics Pvt. Ltd. 49 taxmann.com 252 (Gujarat) and other jurisdictional pronouncements as elaborated in detail in his order

We note that the submission made herein above to the effect that depreciation is allowable @ 80% on charges paid for Temporary Approach Road to windmills, the appellant submit that they have deducted tax at source on the charges paid for Temporary Approach Road to windmills to concerns of Suzlon Group in the year in which the said amount was credited to party's account.

The depreciation claimed on free access to the Wind Mills and for keeping the area vacant surrounding the lease land location of Wind Mills are justified in law. In view of the above we relied on the cited judgements we are of the view that the addition made by the AO on account of depreciation is not sustainable hence, the addition stand deleted.

Ground no. 1 raised by the assessee is allowed.

8. Ground – 2

The next issue is regarding addition of Rs. 2,77,06,992/- being amount received on sale of Renewable Energy Certificate REC and Voluntary Carbon Unit VCU, popularly known as Carbon Credit. The AO states that the appellant has subtracted REC Income of Rs. 2,96,90,146/- & VCU Income of Rs. 15,20,655/- in its Statement of Income from total income in spite of the fact that the said income is received in the ordinary course of carrying on business and chargeable to tax u/s. 28(iv) of the Act. The appellant explained in detail as to why the amount received on sale of carbon credit should not be treated as revenue receipt. That



carbon credit is in the nature of an entitlement received to improve world atmosphere reducing carbon, heat and gas emissions. It is not generated or created due to carrying on business but it is accrued due to world concern. The source of carbon credit is world concern on environmental damage. The appellant also relied upon various High Court and ITAT decisions holding that the amount received on sale of carbon credit is not chargeable to tax either under the head business income or under the head capital gains. The AO has made huge and unwarranted addition of Rs. 2,77,06,992/- being the amounts received on sale of Carbon Credit. The AO did not consider the alternate plea of the appellant of enhancing deduction U/s. 801A of the Act. The next issue Handling/Washing Loss of Salt. The Appellant has filed detailed written submission explaining the relevant facts has carried out proc processing of salt through mechanical washery unit installed by them. The Project Report issued by Central Salt & Marine Chemical Research Institute, Bhavnagar, an Institute set up by the Government of India certifying the loss normally occurring in washing the salt and the finding of the said authority also corroborated by the certificate issued by Surveyors & Loss Assessors appointed to examine and verily the losses suffered (in quantitative terms) in washing of salt. The AO has not dealt with the appellant's explanation and has made huge and unwarranted addition of Rs. 87,29,720/-.

Addition of Rs. 2,77,06,992/- being amount received towards sale of Renewable Energy Certificate, Carbon Emission Reduction Certificate & Voluntary Carbon Unit (hereinafter referred to as "Carbon Credit") as an income. The AO asked the appellant to show cause as to why the amount received on sale of Carbon Credit should not be added back to the total income as sum received on sale of Carbon Credit are in the nature of Revenue Receipt.

The appellant also submitted that amount received on sale of Carbon Credit is not chargeable to tax either under the head "Business Income" or under the head



"Capital Gain" the appellant submit that the other High court in the similar facet of the case has decided the issue in favour of the assessee. However, there is no judgement of jurisdiction High court related to this issue.

Addition of Rs. 2,77,06,992/- on Account of Income received under the head "VCU Income and REC Income" it was submit that the full form of REC is Renewable Energy Certificate and VCU is Voluntary Carbon Unit which are popularly known as "Carbon Credit". During the course of assessment proceedings the appellant had requested the learned AO to enhance the deduction claimed U/s. 801A of the Act to the extent duty of income arising on account of sale of carbon credit if the AO treat the said receipt as revenue receipt instead of capital receipt as claimed by the appellant. The learned AO, in last para of page No. 8 observed that the similar addition was made in the appellant's case for A.Y. 2014-15 and same is pending for disposal before CIT (Appeal). AO himself accepting the fact that the receipt arising on sale of carbon credit is related to the unit for which deduction U/s. 801A of the Act is claimed and therefore deduction u/s. 801A of the Act should have been enhanced to that extent. the fact that the amount received on sale of import entitlement is specified as an income u/s. 2(24) of the Act and same is made chargeable to tax by way of specific provisions incorporated under the head "Profit and Gains of Business or Profession" u/s. 28(iia), (iib) & (iic) of the Act whereas there is no such provision to bring the amount received on sale of Carbon Credit within the ambit of the term, "income" or within the computation provisions of Chapter IV-D of the I. T. Act, 1961.

9. That the Jurisdictional High Court of Gujarat in the following cases whereby in the first case the appeal of the Revenue is dismissed and in another case the appeal of the assessee is allowed following the judgments of the Hon'ble Karnataka and Hon'ble Andhra High Court: -



i) Principal CIT Vadodara-1 Vs Alembic Ltd. Tax Appeal No. 553 & 554 of 2017 (Guj.)

ii) M/s. Ajanta Pvt. Ltd. Vs DCIT Tax Appeal No. 683 of 2017 (Guj.)

In view of this legal position, it is submitted by the counsel that the AO's action in taxing the receipts on sale of carbon credits as revenue receipt may be quashed and the addition of Rs. 2,77,06,992/- may kindly be deleted.

The AO has considered the receipt arising on sale of credit receipt arising on sale of Carbon Credit u/s. 28(iv) of the Act was derived from carrying of the business. the appellant has relied on the judicial pronouncements of Tribunals and High Courts.

For which reliance is placed up on decision rendered by Hon'ble ITAT "B" Bench, Hyderabad in the case of My Home Power Ltd. Vs. DCIT 21 ITR 0186 which is affirmed by Andhra Pradesh High Court in the case of CIT Vs My Home Power Ltd., 365 ITR 0082 (AP), Madras High Court in the case of State of Tamil Nadu Vs Sri Venkateswara & Co., 45 CCH 0222 (Chennai) and Karnataka High Court in the case of CIT-III Vs Subhash Kabini Power Corporation Ltd in 385 ITR 0592. The decision of Hon'ble ITAT B-Bench Hyderabad in case of My Home Power Ltd. Vs DCIT 21 ITR 0186. In this decision it was explained in detail, the nature of carbon credit and why the amount received on transfer of carbon credit unit is not chargeable to tax. Relevant portion of said decision which deals with the taxability aspect of amount received on sale of carbon credit is reproduce herein: -

"Carbon credit is in the nature of "an entitlement received to improve world atmosphere and environment reducing carbon, heat and gas emissions. The entitlement earned for carbon credits can, at best, be regarded as a capital receipt and cannot be taxed as a revenue receipt. It is not generated or created due to carrying on business but it is



accrued due to "world concern". It has been made available assuming character of transferable right or entitlement only due to world concern. The source of carbon credit is world concern and environment. Due to that the assessee gets a privilege in the nature of transfer of carbon credits. Thus, the amount received for carbon credits has no element of profit or gain and it cannot be subjected to tax in any manner under any head of income. It is not liable for tax for the assessment year under consideration in terms of sections 2(24) 28, 45 and 56 of the Income-tax Act, 1961. Carbon credits are made available to the assessee on account of saving of energy consumption and not because of its business. Further, in our opinion, carbon credits cannot be considered as a bi-product. It is a credit given to the assessee under the Kyoto Protocol and because of international understanding. Thus, the assessee who have surplus carbon credits can sell them to other assessee to have capped emission commitment under the Kyoto Protocol. Transferable carbon credit is not a result or incidence of one's business and it is a credit for reducing emissions. The persons having carbon credits get benefit by selling the same to a person who needs carbon credits to overcome one's negative point carbon credit. The amount received is not received for producing and/or selling any product, bi-product or for rendering any service for carrying on the business. In our opinion, carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt, For this proposition, we place reliance on the judgement of the Supreme Court in the case of CIT vs. Maheshwari Devi Jute Mills Ltd.

(57 ITR 36) wherein held that transfer of surplus loom hours to other mill out of those allotted to the assessee under an agreement for control of production was capital receipt and not income. Being so, the consideration received by the assessee is similar to consideration received by transferring of loom hours. The Supreme Court considered this fact and observed that taxability of payment received for sale of loom hours by the assessee is on account of exploitation of capital asset and it is capital receipt and not an income. Similarly, in the present case the assessee transferred the carbon credits like loom hours to some other concerns for certain consideration. Therefore, the receipt of such consideration cannot be considered as business income and it is a capital receipt. Accordingly, we are of the opinion that the consideration received on account of carbon credits cannot be considered as income as taxable in the assessment year under consideration. 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.

10. That credits for reducing carbon emission or greenhouse effect can be transferred to another party in need of reduction of carbon emission.

The assessee also further relied on the decision of Hyderabad Tribunal in the case of My Home Power Ltd. Where in it was held that amount received to improve world atmosphere and environment reducing carbon, heat and gas emission is a capital receipt and not changeable to tax Citation of some of the cases where such view was held are given herein under: -

a) Sri Velayudhaswami Spinning Mills Pvt. Ltd. Vs DCIT 27 ITR (Trib) 0106 (Chennai)

b) Ambika Cotton Mills Ltd. Vs DCIT 27 ITR (Trib) 0044 (Chennai)

c) Shree Cement Ltd. Vs Addl. CIT 31 ITR(Trib) 0513 (Jaipur)

d) Adisankara Spinning Mills Pvt. Ltd. Vs DCIT 35 ITR (Trib) 0283 (Chennai)

e) India Dyeing Mills Pvt. Ltd. Vs ACIT 36 ITR (Trib) 0055 (Chennai)

f) Arun Textiles Pvt. Ltd. Vs ACIT 36 ITR (Trib) 0300 (Chennai)

g) Arun Textiles Pvt. Ltd. Vs ACIT 42 ITR (Trib) 0064 (Chennai)

h) DCIT Vs Sree Rayalaseema Green Energy System Ltd. 36 ITR (Trib) 0627 (Hyd)

i) ITO Vs Perpectual Energy System Ltd. 43 CCH 0176 (Hyd Trib)

j) ACIT Vs Intex 38 ITR (Trib) 0496 Chennai



k) Aditya Birla Novo Ltd. & Anr Vs DCIT 45 CCH 0222 (Mumbai Trib.)

l) ACIT & Anr Vs L.H. Sugar Factory Ltd. & Anr. 46 HHC 0354 (Luck)

11. We note that during the course of argument the appellant also invite the attention towards the decision rendered by Commissioner of Income Tax (A), National Faceless Appellate Centre, Delhi in the case of Oswal Salt & Chemical Inds. in Order Nos. ITBA/NFAC/S/250/2020-21/1031683360(1) dated 23.03.2021 for the Asstt. Year 2016-17 & ITBA/NFAC/S/250/2021-22/1033738074 dated 28.06.2021 for the Asstt. Year 2017-18 wherein following the decision of Jurisdictional High Court of Gujarat, the receipt arising on account of sale of carbon credit is held as capital receipt and the addition made by the Learned AO in that case was ordered to be deleted.

We note that during the course of assessment proceedings, the assessee has submitted number of documents such as audit report, ledger copies etc. but not submitted the detail of transaction of carbon credit.

12. On perusal of the statement of income, the claim of the assessee is that it is a capital receipt and hence not liable to tax as no forming part of taxable income. On the contrary, the view of the Assessing Officer is that REC/ VCU has been received in the ordinary course of carrying business by the assessee, it is a business receipt / revenue receipt, hence, section 28(iv) of the Act on this score the receipt from sale of CERs comes within the ambit of taxability. The entitlement earned for carbon credits can, at best, be regarded as a capital receipt and cannot be taxed as a revenue receipt. Thus, the amount received for carbon credits has no element of profit or gain and it cannot be liable for tax for the assessment year under consideration in terms of sections 2(24) 28, 45 and 56 of the Income-tax Act, 1961. Carbon credits are made available to the assessee on



account of saving of energy consumption and not because of its business. In our opinion, carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt. For this proposition, we place reliance on the judgement of the Supreme Court in the case of CIT vs. Maheshwari Devi Jute Mills Ltd. (57 ITR 36) wherein held that transfer of surplus loom hours to other mill out of those allotted to the assessee under an agreement for control of production was capital receipt and not income. Being so, the consideration received by the assessee is similar to consideration received by transferring of loom hours. The Supreme Court considered this fact and observed that taxability of payment received for sale of loom hours by the assessee is on account of exploitation of capital asset and it is capital receipt and not an income.

The assessee relied on number of judgements:

- a) *Sri Velayudhaswami Spinning Mills Pvt. Ltd. Vs DCIT 27 ITR (Trib) 0106 (Chennai)*
- b) *Ambika Cotton Mills Ltd. Vs DCIT 27 ITR (Trib) 0044 (Chennai)*
- c) *Shree Cement Ltd. Vs Addl. CIT 31 ITR(Trib) 0513 (Jaipur)*
- d) *Adisankara Spinning Mills Pvt. Ltd. Vs DCIT 35 ITR (Trib) 0283 (Chennai)*
- e) *India Dyeing Mills Pvt. Ltd. Vs ACIT 36 ITR (Trib) 0055 (Chennai)*
- f) *Arun Textiles Pvt. Ltd. Vs ACIT 36 ITR (Trib) 0300 (Chennai)*
- g) *Arun Textiles Pvt. Ltd. Vs ACIT 42 ITR (Trib) 0064 (Chennai)*
- h) *DCIT Vs Sree Rayalaseema Green Energy System Ltd. 36 ITR (Trib) 0627 (Hyd)*
- i) *ITO Vs Perpectual Energy System Ltd. 43 CCH 0176 (Hyd Trib)*
- J) *ACIT Vs Intex 38 ITR (Trib) 0496 Chennai*
- k) *Aditya Birla Novo Ltd. & Anr Vs DCIT 45 CCH 0222 (Mumbai Trib.)*
- l) *ACIT & Anr Vs L.H. Sugar Factory Ltd. & Anr. 46 HHC 0354 (Luck)*



13. That on perusal of the judgment cited above it is clear carbon credit is not in the nature of profit, hence, does not come under the purview of the total income. The AO is of the view that the CERs/Carbon Credits are, incentives by the Government. That CERs is a right which is transferable and by transfer the industry can make money by selling them. Based on the quantum of exports, the exporters are given import entitlements. The exporter can either import the raw material/ goods covered by the its or without importing the goods they can sell the CER if they import, they consume or exhaust it's so that extent, if they do not, then to the extent they save they can sell and earn money. CERs are also entitlements for consuming fossil fuel. Which are available for sale. Both are rights or permits Even by Government. "If an assessee exploits its by actually importing the goods referred to therein and sells the same, the sale proceeds cannot, in any sense, be said to be a capital receipt. The fact that the assessee chooses to exploit it's in a different manner, other than actual import, will not make any change is the character of the receipt.

14. The sale of import entitlement is one of the modes of exploiting the import entitlement and, therefore, will clearly be a revenue receipt :

- [George Malijo & Co. (Vizag) v. CIT (1986) 157 ITR 475 (Mad)]
- Swadeshi Cotton Mills Co. Ltd. v. CIT [1989] 47 Tasman 215 (All)
- Jeewanlal (1929) Ltd. v. CIT (1991) 57 Taxman 123 (Cal.),
- Gedore Tools Pvt. Ltd. vs. CIT (1999) 105 Taxman 3 (Delhi) 643,

Section 28(iv) clearly brings the receipt from sale of CERs within the ambit of taxability. The subsection (iv) to section 28 brings into the tax net "the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession." There are following two conditions:



- (i) assessee receives any benefit or perquisite,
- (ii) they should arise in the course of business.

"Benefit" means "advantage; Profit; Gains, Interest; Use; Promotion of welfare or Prosperity, helpful result A benefaction or deed of Kindness; favour bestowed; privilege. "Benefit" is a word of wide import. It could be express or otherwise.

The term "perquisite" means that it is an additional benefit and not a complete substitution of one's income.

15. We further note that the assessee has stated that the amount of carbon credit has been collected along with consideration of sales, however, no copy of sale bill & ledger in respect of carbon credit has been produced filed before the AO. During the course of assessment.

During the hearing before us, the assessee was asked to file detail about how this carbon credit was received by the assessee and how the accounting was made by the assessee whether the assessee has followed the norms / guidelines issued by the institute of chartered accounts of India, for recording in the books of account. The case was fixed for hearing two times and unfortunately no submission was made by the assessee.

We note that institute of chartered accounts of India has issued guidance on carbon credit which has not been followed by the assessee that assessee has also not submit before us bills/invoices stating purchase/ sale of carbon credit. The assessee has not produce bank statement to examine the carbon credit. What is the accounting treatment in assessee books about carbon credits has not been explained without asserting these facts the case law relied on by the Ld. Counsel



for the assessee does not come to help the assessee. The judgements relied on by Ld. Counsel would be applicable on facts however, facts are not clear. Without being explain these facts the assessee is not entitled for benefit of carbon credit. Since, these facts are not clear therefore, we remit the issue back to the file of the AO. With the direction to AO to examine the facts pertaining to carbon credit and adjudicate the issue as per provision of the Act.

In the result Ground no. 2 raised by the assessee in ITA No. 99/Rjt/2023 and Grounds raised by the assessee in ITA No. 169/Rjt/2024 are allowed for statical purpose.

16. Ground no.3

Addition of Rs. 87,29,720/- on account of disallowances of expensive on washing salt. During the course of hearing it was brought to our notice assessee claimed washing loss of 54270.500 Mts. on total quantity of 276547 Mts. (opening stock of unwashed salt + purchase of unwashed salt + production during the year) which works out to 19.63% on total quantity and assessee has to explain to claim of washing loss in excess of 10% on total quantity which works out to 26615 Mts (54270.500 (-) 27655.50) should not be rejected and the resultant amount should not be added to our Income.

17. It was submitted by the assessee that there are various factors which affect the proportion of washing loss. One such factor is rain water. Other than that, in this concern the stock was subjected to mechanical process through a 'Washery' unit. In this process the salt moves on a conveyer belt in a thin layer when water is sprinkled to remove impurities and to reduce the calcium and magnesium content causing washing loss at a higher rate which generally range from 20% to 30%. Salt which has been subjected to washery process can fetch higher realization as



compare to the unwashed salt exported to overseas countries. Assessee have realized around Rs. 1400/- to 1450/ PMT on export of Washed salt as compare to Rs. 1000/- to 1050/- PMT on export of unwashed salt. Assessee enclosed a Project report prepared by Central salt and Marine Chemical Research Institute, Bhavnagar in November, 2015 in the case of The Kutch Salt & Allied Inda. Ltd. on the assessment of washing loss in the said salt washery, the said Institute is set up by the Government of India. The assessee is performing the same washing procedure as performed by The Kutch Salt & Allied Inds. Ltd., the said project report would also be applicable to our case. As per the said report the percentage of loss in washery process ranges around 28% to 30%.

18. The AO has in his conclusion part stated that claim of shortages @ 19.63% is very excessive. Further, in the preceding years also the appellant AO looking to the facts of the case in that year washing loss to the extent of 10% is consider to be justifiable for the year and excess washing/handling loss over and above 10% is disallowed.

19. The Ld. CIT(A) during appellant proceedings found that the order of the AO disallowance excess claim is reasonable and confirm the order of AO. Regarding the disallowance of washing and handling loss of salt manufacturing of Rs. 82,92,720/-, the Assessing Officer's finding that the shortage claimed highly excessive and determined 10% loss on washing salt. That the disallowance without any scientific basis or without any evidence from any expert's opinion. The Assessing Officer also failed to note the assessee major salt manufacture were being exported. The mechanical washery process used by the assessee to ensure that the impurities namely calcium and magnesium contents are minimized, which has resultant in higher percentage wastage of salt. The Assessing officer also has not given total claim of expenses and was approved by Ld. CIT(A) due credit to the "Washery Loss Assessment Report" filed by the



assessee in the case of M/s. Kutch Salt & Allied Industries Ltd. wherein the loss in washery process ranges from 22.16% to 25.198% has determined by the expert body. Furthermore, the Ld. D.R. could not produce any evidence in support of the order made by the Assessing Officer. Therefore, the grounds raised by the assessee is allowed and the addition made on account of disallowance of washing loss is hereby deleted.

20. In the result, the appeal of the assessee is partly allowed, in above terms.

Order is pronounced in the open court on 02/01/2026.

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

**Sd/-
(Dr. Dinesh Mohan Sinha)
Judicial Member**

Rajkot
दिनांक/ Date: 02/01/2026

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. DR/AR, ITAT, Rajkot
5. Guard File

// TRUE COPY //

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot