

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1462/Mds/2016
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Texmo Industries,
Mettupalayam Road,
G.N. Mills Post,
Coimbatore – 641 029.

v. The Joint Commissioner of Income
Tax,
Range-II,
Coimbatore.

PAN : AABFT1899B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri A. Dhanajayan, CA
: Shri G.M. Das, CIT

सुनवाई की तारीख/Date of Hearing

: 30.01.2017

घोषणा की तारीख/Date of Pronouncement

: 28.02.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Principal Commissioner of Income Tax -2, Coimbatore dated 24.03.2016 and pertains to the assessment year 2011-12.

2. Shri A. Dhananjayan, the Ld. representative for the assessee submitted that the assessee claimed deduction of Rs.5,47,13,299/-

under Section 80IA of the Income Tax Act, 1961 (in short 'the Act') for the wind energy generation unit. The assessee has also claimed loss of Rs.41,34,41,562/- from the wind mill division for the year ending 31.03.2011 and same was set off against other business income. The Assessing Officer allowed the claim of the assessee. The Principal Commissioner in the guise of exercising his jurisdiction under Section 263 of the Act, set aside the order of the CIT (Appeals) and directed the Assessing Officer to redo the assessment.

3. The Principal Commissioner has also found that interest on partners current account has to be disallowed under Section 40(b) of the Act.

4. According to the Ld. representative, the HUF as such cannot be a partner in the partnership firm. However one of the coparcener of the HUF can always be a partner representing the HUF. In this case, according to the Ld. representative, one of the coparcener was a partner representing HUF. Hence the interest paid cannot be disallowed under Section 40(b) of the Act.

5. On the contrary, Shri G.M. Das, the Ld. Departmental Representative submitted that the claim of loss in the wind mill division

and the payment of interest to the partners was not subject matter of discussion in the assessment year. According to the Ld. D.R., the assessment order shall contain the reasons for allowing or disallowing the claim of the assessee. In this case, according to the Ld. D.R., the Assessing Officer has not applied his mind to the provisions of the Income Tax Act and the materials available on record. Therefore, there was an error in the order of the Assessing Officer which is prejudicial to the interest of the Revenue. Hence, the Principal Commissioner of Income Tax has rightly set aside the order of the Assessing Officer and directed the Assessing Officer to redo the assessment afresh in accordance with law.

6. We have considered the rival submissions on either side and perused the material available on record. The Principal CIT found that the Assessing Officer has not considered the deduction claimed by the assessee to the extent of Rs.5,47,13,299/- while completing the assessment in respect of wind mill division. The Principal Commissioner has also found that interest paid to the partner to the extent of Rs.13 lakhs was allowed without any discussion in the assessment order. Therefore, he found that there was an error in the order of the Assessing Officer. This Tribunal is of the considered opinion that the proceedings before the Assessing Officer is a judicial

proceeding under Section 131 of the Act. Therefore, the reasons for the conclusion reached either allowing or disallowing the claim of the assessee has to be recorded in the assessment order itself. The reasons for conclusion reached in the assessment order cannot be substituted either by filing an affidavit before the revisional / appellate authorities or by way of filing additional materials. The reasons recorded in the assessment order is a live link to the materials available on record and the mind of the decision maker. The reasons for reaching particular conclusion would certainly remove arbitrariness and display fairness in the proceedings. It will also repose confidence on the litigant public. It is well settled principles of law that the judicial and administrative order shall contain the reasons for the conclusions reached therein.

7. In the case before us, even though the assessment proceedings is a judicial proceeding before the Assessing Officer, it does not contain any reasons for allowing the claim of the assessee under Section 80IA of the Act and also the payment of interest on the partners current account. Therefore, this Tribunal is of the considered opinion that the Principal CIT has rightly exercised his jurisdiction under Section 263 of the Act. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly,

the same is confirmed. It is made clear that the Assessing Officer shall redo the assessment in accordance with law after giving a reasonable opportunity to the assessee without being influenced by the observation made by the Principal CIT in the impugned order.

8. In the result, the appeal of the assessee stands dismissed.

Order pronounced on 28th February, 2017 at Chennai.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Coimbatore
4. आयकर आयुक्त/CIT
5. Principal Commissioner of Income Tax-2, Coimbatore
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.