आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 1347/PN/2014
निर्धारण वर्ष / Assessment Year: 2011-12

Mayura Steels Private Limited,
R.S.No.526, Shiye Bawada Road,
Kolhapur – 416122

PAN : AABCM7847D

.......अपीलार्थी / Appellant

बनाम / V/s.

Addl. Commissioner of Income Tax,
Range – 2, Kolhapur

......प्रत्यर्थी / Respondent

Assessee by	: Shri Ajinkya A. Jagoje
Revenue by	: Shri Hitendra Ninave

सुनवाई की तारीख / Date of Hearing	: 26-10-2015
घोषणा की तारीख / Date of Pronouncement	: 28-10-2015

आदेश / ORDER

PER VIKAS AWASTHY, JM :

The appeal has been filed by the assessee impugning the order of Commissioner of Income Tax (Appeals), Kolhapur dated 21-03-2014 for the assessment year 2011-12.

2. The only issue raised in the appeal is, whether the assessee is eligible to claim higher rate of depreciation (80%) on the civil construction and electrical installations of windmill.

3. The assessee is a private limited company and is engaged in the business of manufacture and sale of alloy steel castings, foundry equipments, hiring of gas cylinders and generation of electricity from windmill. The assessee filed its return of income for the impugned assessment year on 28.09.2011 declaring total income of Rs.7,85,94,683/-. During the course of scrutiny assessment, the Assessing Officer made disallowance of depreciation claimed by the assessee on windmill. The assessee had claimed depreciation on Rs.6,65,08,380/- i.e. entire cost of windmill unit including concrete base structure and electrical installations. The Assessing Officer held that civil construction and electrical fittings are not part of windmill, therefore, these components are not eligible for higher rate of depreciation @ 80%. The Assessing Officer restricted the depreciation @ 10% on the aforesaid components and made disallowance of Rs.16,20,000/-.

Aggrieved by the assessment order dated 23.10.2013, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) affirmed the findings of Assessing Officer and rejected the appeal of the assessee. Now, the assessee is in second appeal before the Tribunal against the findings of Commissioner of Income Tax (Appeals).

4. Shri Ajinkya A. Jagoje appearing on behalf of the assessee submitted that the assessee had installed windmills at Petnikota, Kurnool, Andhra Pradesh and at Jinti, District Satara, Maharashtra. The assessee had claimed depreciation on the total capitalized value of windmills @ 80%. The Assessing Officer bifurcated the different

components of windmill and restricted depreciation on the foundation civil work and electrical installation at 10% i.e. Rs.1,80,000/-. The ld. AR contented that the assessee is eligible to claim depreciation on the entire composite unit of windmill, which includes concrete foundation as well as electrical installations. In support of his submissions, he placed reliance on the following decisions:-

1. CIT, Ahmedabad-III Vs. Parry Engineering & Electronics (P.) Ltd. (2014) 49 taxmann.com 252 (Gujarat)

2. CIT-III, Pune Vs. Cooper Foundry Pvt. Ltd. – Income Tax Appeal No.1326 of 2010 (Bombay High Court)

3. Western Precicast Pvt. Ltd. Sangli – ITA No.1495/PN/2011 dated 30.01.13 (Pune Bench "B")

4. Kutti Spinners (P.) Ltd. (2014) 51 taxmann.com 534 (Chennai – Trib.)

5. On the other hand, Shri Hitendra Ninave representing the Department, vehemently supported the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of the assessee.

6. We have heard the submissions made by the representatives of both sides and have perused the orders of the authorities below. We have also considered the decisions on which the ld. AR has placed reliance in support of his submissions. The only issue raised in the appeal is whether the civil work forming the foundation of windmill and electrical installations are integral part of windmill and eligible for higher rate of depreciation @ 80%. The issue raised in the present appeal is no more *res integra*. There are catina of decisions by various Hon'ble High Courts and the co-ordinate Benches of Tribunal, wherein this issue has time and again been adjudicated. The Hon'ble High Courts have been consistently holding that windmill civil structure

foundation and electrical fittings are closely inter-connected and linked with each other making it a single composite unit. Therefore, on all the components of the windmill, whether it be concrete foundation or electrical fittings / installations, depreciation @ 80% has to be allowed. The Hon'ble Gujarat High Court in the case of CIT, Ahmedabad-III Vs. Parry Engineering & Electronics (P.) Ltd. (supra) has held as under:-

> *"5. We are of the opinion that the approach of both the authorities is perfectly justified. Windmill would require a scientifically designed machinery in order to harness the wind energy to the maximum potential. Such device has to be fitted and mounted on a civil construction, equipped with electric fittings in order to transmit the electricity so generated. Such civil structure and electric fittings, therefore, it can be well imagined, would be highly specialized. Thus, such civil construction and electric fitting would have no use other than for the purpose of functioning of the windmill. On the other hand, it can be easily imagined that windmill cannot function without appropriate installation and electrification. In other words, the installation of windmill and the civil structure and the electric fittings are so closely interconnected and linked as to form the common plant. As already noted, the legislature has provided for higher rate of depreciation of 80 per cent on renewable energy devises including windmill and any specially designed devise, which runs on windmill. The civil structure and the electric fitting, equipments are part and parcel of the windmill and cannot be separated from the same. The assessee's claim for higher depreciation on such investment was, therefore, rightly allowed."*

7. The Hon'ble Bombay High Court in the case of CIT-III, Pune Vs. Cooper Foundry Pvt. Ltd. (supra), has held that cement foundation is to be included in the cost of windmill while granting depreciation @ 80%. Similar view has been taken by the Pune Bench in case of Asstt. CIT Vs. Western Precicast Pvt. Ltd. (supra) and the Chennai Bench of Tribunal in the case of Kutti Spinners (P.) Ltd. (supra). Thus, in view of the facts of the case and various decisions discussed above, we hold that the assessee is eligible to claim depreciation @ 80% on electrical installations as well as civil construction – concrete foundation of the windmill.

8. In the result, the appeal of the assessee is allowed and the impugned order is set-aside.

Order pronounced on Wednesday, the 28th day of October, 2015.

Sd/-	Sd/-
(आर. के. पांडा / R.K. Panda)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th October, 2015
GCVSR/RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A), Kolhapur.
4. आयकर आयुक्त / The CIT-I / II, Kolhapur / CIT (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. /

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune