IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH “E”, MUMBAI

BEFORE SHRI N.V.VASUDEVAN(J.M) & SHRI R.K.PANDA (A.M)

ITA NO.4107/MUM/2011(A.Y.2004-05)

Enercon (India) Limited, Enercon Tower, Plot No.A-9, Veera Industrial Estate, Veera Desai Road, Andheri (W), Mumbai 400 053. PAN:AAACE0319D (Appellant)	Vs.	The ACIT 8(1), Aaykar Bhavan, MK Road, Mumbai – 20. (Respondent)

Appellant by	:	Shri J.P.Bairagra
Respondent by	:	Shri B.Jayakumar
Date of hearing	:	08/09/2011
Date of pronouncement	:	14/09/2011

ORDER

PER N.V.VASUDEVAN, J.M,

This is an appeal by the assessee against the order dated 22/3/11 of CIT(A)-16, Mumbai relating to assessment year 2004-05.

2. The assessee is a company engaged in the business of manufacture of Wind Turbine Generators (Wind Mills), accessories and parts. The assessment under section 143(3) of the Income Tax Act, 1961(the Act) was completed on 29/12/2006, determining NIL total income under the normal provisions of the Act. However, the Book Profit under section 115JB of the Act was computed at Rs. 67,54,55,468/- and the Assessee was ultimately taxed on book profits as per the provisions of Sec.115JB of the Act. The assessee had debited an amount of Rs. 485.33 lacs on account of provision

for repairs and maintenance in the profit and loss account and that the entire provision along with the old provision for repairs and maintenance was outstanding as payable in the Balance Sheet. The claim was allowed by the Assessing Officer in the order u/s. 143(3) of the Act both while computing total income as per the normal provisions of the Act as well as per the provisions of Sec.115JB of the Act.

3. The Commissioner of Income Tax-8, Mumbai in exercise of his powers u/s. 263 of the Act passed an order dt.25/3/2009 holding that the order of the AO as aforesaid was erroneous and prejudicial to the interest of the Revenue. The CIT -8, Mumbai, in the order u/s. 263 dated 25/3/2009, modified the order of the AO and directed re-computation of the total income of the assessee under the normal provisions other than section 115JB and under section 115JB of the Act as follows:

> "Accordingly, the assessment made by the AO is modified to the extent that the provision of claim by the assessee of Rs. 485.33 lacs for repairs and maintenance as explained in the Profit & Loss Account is liable to be added back to the income to be computed under the normal provisions as well as added back to the book profits for computing liability u/s. 115JB. The assessment made by the AO is accordingly set aside and the AO is directed to re-compute the income under the normal provisions of I.T. Act as well as the Book Profit u/s. 115JB and issue demand notice accordingly."

4. The assessee filed an appeal before the CIT(A) against the order of the AO. The CIT(A) however dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A) the assessee has preferred the present appeal before the Tribunal.

5. At the time of hearing of the appeal it was brought to our notice that against the order of the CIT dated 25/3/09 passed under section 263 of the Act, the assessee preferred an appeal before the Tribunal in ITA No.3408/M/09 and the Hon'ble Tribunal by its order dated 3/6/11 was

pleased to quash the order under section 263 of the Act. In view of the above the consequential order passed under section 143(3) r.w.s. 263 of the Act and the addition made in that order cannot survive. Accordingly we allow the appeal of the assessee and hold that the disallowance for provision of repairs and maintenance while computing total income as per normal provisions of the Act as well as for computing book profits under section 115 JB of the Act cannot be sustained and the same is hereby deleted.

6. In the result, the appeal be the assessee is allowed.

Order pronounced in the open court on the 14th day of Sept., 2011.

Sd/- Sd/-

(R.K.PANDA) (N.V.VASUDEVAN)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Mumbai, Dated. 14th Sept.2011

Copy to: 1. The Appellant 2. The Respondent 3. The CIT City –concerned
4. The CIT(A)- concerned 5. The D.R"E" Bench.

(True copy) By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.

Vm.

	Details	Date	Initials	Designation
1	Draft dictated on	8/9/11		Sr.PS/PS
2	Draft Placed before author	12/9/11		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			