



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 143/2008

VESTAS RRB INDIA LTD.

..... Appellant  
Through Mr.K. Sampath with  
Mr.Krishan Mahajan, Advs.

versus

ADDL. COMMISSIONER OF INCOME TAX ..... Respondent  
Through Mrs. P.L. Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE V.B. GUPTA

ORDER

29.02.2008

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The Revenue is aggrieved by an order dated 15<sup>th</sup> June, 2007 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' in ITA Nos. 704 & 705(Del) 2004 relevant for the Assessment Years 2000-2001 and 2002-2003.

The present appeal pertains to the assessment year 2002-2003.

The Assessee manufactures Wind Electric Generators. According to the Assessee, it has installed these Wind Electric Generators for the purposes of demonstration to show that it is possible to harness wind energy and convert it into electrical energy. According to the Assessee, the Wind Electric Generators are for sale and the demonstration is for

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this purpose.

As a part of the demonstration activity, according to the Assessee, it produces electricity which is then sold to the Tamil Nadu State Electricity Board. The Assessee says that it is entitled to claim a deduction under Section 80-IA of the Income Tax Act, 1961 (for short the Act). It is the further case of the Assessee that because it is harnessing wind energy, it is not incurring any expenditure or any maintenance charges.

In so far as the deduction under Section 80-IA of the Act is concerned, the Tribunal has found that issue in favour of the Assessee and, therefore, no question of law arises in this regard.

The issue that survives is with regard to the expenses on maintenance and depreciation on the Wind Energy Generators.

The Tribunal has referred to Section 80-IA (5) of the Act, which reads as follows: -

**"80-IA. Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.**

(1) to (4)    xxx    xxx    xxx

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible



Business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made."

The question that arises on the interpretation of the above provision is whether the depreciation claimed and expenses incurred are to be taken on a stand-alone basis in respect of the production and sale of electricity or are to be clubbed along with the business of the Assessee of the manufacture of Wind Electric Generators.

The Tribunal has noted that there appears to be an inherent contradiction in the stand of the Assessee in as much as on the one hand according to the Assessee, it is manufacturing Wind Electric Generators and production of electricity is not its business; while on the other hand, it is<sup>2</sup> contended that the production of electricity is its ancillary business.

That apart, the Tribunal has noted, and we think rightly, that in terms of sub-Section (5) to Section 80-IA of the Act, the eligible business (which is the business carried on under sub-Section (4) to Section 80-IA of the Act) is required to be treated as a stand-alone business because as



mentioned in sub-Section (5), the deduction is to be computed as if the eligible business in the only source of income during the previous year relevant to the initial assessment year and to every subsequent assessment year. Since that is the clear language of sub-Section (5) to Section 80-IA of the Act, any expenditure incurred by the Assessee towards maintenance or any depreciation that the Assessee claims can only be on a stand-alone basis under sub-Section (5) to Section 80-IA of the Act, the eligible business being the only source of income.

It is submitted by learned counsel that the Assessee should be entitled to a proportionate deduction towards depreciation and maintenance expenses etc. because it is also carrying on the business of manufacture of Wind Electric Generators.

We find, on going through the assessment order, that no such contention was urged by the Assessee. However, in the order passed by the Tribunal, there is a mention of this in paragraph 12 but that is only in the context of the contention urged by the Assessee that the main business activity of the Assessee was manufacture and sale of Wind Electric Generators. No material was placed by the Assessee to claim any proportionate allocation of depreciation and expenses and



was, therefore, not seriously considered.

In our opinion, no substantial question of law arises.

Dismissed.

*Madan Lokur*

MADAN B. LOKUR, J

*V.B. Gupta*

V.B. GUPTA, J

FEBRUARY 29, 2008

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