IN THE INCOME TAX APPELLATE TRIBUNAL"A" BENCH, CHENNAI

BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER ANDHON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

ITA No.2720/Chny/2018

(Assessment Year: 2013-14)

M/s.Bharath Wind Farm Ltd. Sigapi Achi Building, 4th Floor 18/5, Rukmani Lakshmipathi Road, Egmore, Chennai-600 008.	Vs.	**DCIT-Corporate Circle 1(2)** Chennai – 600 034
PAN/GIR No. AADCB-1556-E		
(**Appellant**)	:	(**Respondent**)

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ITA No.2704/Chny/2018

(Assessment Year: 2013-14)

DCIT-Corporate Circle 1(2) Chennai – 600 034	Vs.	**M/s.Bharath Wind Farm Ltd.** Sigapi Achi Building, 4th Floor 18/5, Rukmani Lakshmipathi Road, Egmore, Chennai-600 008.
PAN/GIR No. AADCB-1556-E		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	Shri R.Sivaraman (Advocate)-Ld. AR
Department by	:	Shri AR.V.Sreenivasan (Addl.CIT)-Ld. DR

Date of Hearing	:	02-12-2021
Date of Pronouncement	:	21-01-2022

O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross-appeals for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 29-06-2018 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s.143(3) of the Act on 10.03.2016. The ground raised by the assessee read as under: -

> 1. The order of CIT(A) No.ITA No.53/CIT(A)-1/2016-17 dated 29.06.2018 is against law and fact of the case.
> 2. The CIT(A) erred in confirming the disallowance of the claim of Rs.2,96,62,698/- being the amount claimed as provision relating to CDM (Clean Development Mechanism) income in earlier year written back.
> 3. The CIT(A) erred in holding the amount receivable on account of CER's (Carbon Emission Reduction) is capital in nature and therefore the subsequent write back cannot result in an allowable deduction.

2. Having heard rival submissions and after considering the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

3. The material facts are that the assessee being resident corporate assessee was assessed u/s 143(3) on 10.03.2016. In computation of income, the assessee created a provision for Rs.296.62 Lacs, being Clean Development Mechanism (CDM) income declared in earlier years. The assessee submitted that this income was declared in earlier years and the same was not ultimately realized and therefore, claimed as deduction. However, Ld. AO noted that to claim deduction u/s 36(1)(vii) r.w.s. 36(2), the income should be declared in earlier years and the same should be written-off in the books. Since the assessee did not

write-off the receivables in the books of accounts, the same was added back to its income.

4. During appellate proceedings, the assessee, inter-alia, submitted that the write-back is in accordance with the guidance note on Accounting for self generated certified emission reductions issued by The Institute of Chartered Accountants of India. It was explained that renewable energy projects such as bio-mass power projects, wind power projects were eligible for availing certified emission reduction (CER / Carbon Credits) subject to justification of additionality under the Clean Development Mechanism (CDM). Based on the power supplied by the assessee to grid, the assessee became entitled to CER which was calculated by taking into account the grid emission factor published by the Central Electrical Authority. The assessee appointed third parties for verification of the project and based on certificates issue by these third parties, the UNFCCC (United Nations Framework Convention on Climate Change) issue CERs for the projects registered under the Clean Development mechanism Cycle (CDM). The CERs issued could be traded at prevailing market prices. On the basis of wind mill power generated by assessee during FYs 2007-08, 2008-09 & 2009-10, the assessee booked income of Rs.305.59 Lacs in AY 2010-11. The assessee credited CDM revenue account and debited CDM revenue receivable account. However, subsequently, CER market crashed in 2012 and as a result, the assessee did not make efforts to get CERs certified by UNFCCC. Therefore, the income booked during AY 2010-11 was reversed during the year which was claimed in the computation of income. The assessee debited accumulated Profit & Loss Account and credited CDM receivable account and accordingly, claimed the same in

the computation of income as 'provision relating to CDM income in earlier years written back during this year'. The said accounting treatment was stated to be in accordance with the guidance note of ICAI on Certified Emission reductions. Further, in the annual report for the year ended 31.03.2013, CER income was reduced from the opening balance of Profit & Loss Account. Thus, the relevant entry was made in the Balance Sheet in accordance with the transitional provision of the guidance note. Thus, CER income booked in earlier years was reversed during the year and the same was claimed as deduction. Since, it was case of reversal of income and not writing-off of bad debts, the provisions of Sec.36(1)(vii) r.w.s. 36(2) were not applicable.

5. The Ld. CIT(A) observed that in terms of guidance note, these CERs were in the nature of inventory and the same were required to be disclosed at cost in Balance Sheet. The accounting standard as applicable to valuation of inventories as well as revenue recognition would also apply to CERs. As regards transition provisions, it was provided that the entity should recognize in their financial statements, the CERs that have been earned by them as on that date by making a credit to the revenue reserve account. Thus, it was observed that in respect of past transactions which are sought to be corrected as part of transition provisions, the only requirement was to being on record the CERs already earned by making an entry in the Reserve account and not in the Profit & Loss Account. The guidance note did not contain any stipulation as contended by the assessee and did not provide for reversing any income that have been booked in the past. Further, income from CERs were held to be capital receipts as per various judicial decisions as enumerated in the impugned order. The provisions of Section 115BBG

was introduced only w.e.f. AY 2018-19 to bring to tax such receipts. Further, the guidance notes issued by ICAI did not determine the chargeability of tax in respect of CERs under the Act. The assessee may have booked CERs in the past as amount receivable, however, the nature of these items was capital in nature and therefore, subsequent write back could not result into an allowable deduction to the assessee. Thus, the action of Ld. AO was upheld. Aggrieved the assessee is in further appeal before us.

Our findings and Adjudication

6. Upon careful consideration of factual matrix, it could be seen that the assessee has earned Carbon Credits in earlier years on the basis of wind-mill power generated during FYs 2007-08, 2008-09 & 2009-10. Recognizing the same in its books of accounts, the assessee booked income of Rs.305.59 Lacs in AY 2010-11. This is an undisputed fact that this income has been offered to tax in earlier years. The credits earned by the assessee could be sold at prevailing market prices. In AY 2010-11, the assessee credited CDM revenue account and debited CDM revenue receivable account and booked income in that year. The CDM revenue receivable account was shown on asset side as amount receivable which would have liquidated upon sale of Carbon Credits by the assessee. However, unfortunately CER market crashed in 2012 and as a result, these credits could not be realized and the assessee had to forgo the credits ultimately. Accordingly, the income to the extent of Rs.296.62 Lacs (after adjusting exchange difference) was reversed by reducing the opening balance of Accumulated Profit & Loss Account and the claim was made in the computation of income. The said accounting treatment was in accordance with the applicable accounting standards.

Logically also, when the provision was created in earlier years, the same was by way of credit to Profit & Loss account. Accordingly, when the same has been reversed, the same has been adjusted from the accumulated balance of Profit & Loss Account. Thus, it was a case when a provision of income was made in the books of account which was offered to tax. However, the income could ultimately be not realized and accordingly, the same has been claimed as deduction. On the given facts, we concur with the submissions of Ld. AR that the provisions of Sec.36(1)(vii) r.w.s. 36(2) were not applicable since it was not the case of bad debts. The Ld. CIT(A) has denied the claim of the assessee by observing that the CER receipts would be capital receipts and therefore, any loss arising therefrom would be capital loss only and hence not allowable. However, the said observation over-look the fact that despite being capital receipts, the assessee has offered the same to tax in earlier years. The assessee's action of offering the income to tax, in our opinion, would entitle him to claim the expenditure if ultimately the receipts could not be realized by the assessee. The same is based on the principal of equity and natural justice. Therefore, on the given facts and circumstances, we would hold that the claim made by the assessee was an allowable deduction. The Ld. AO is directed to grant the deduction as claimed by the assessee. Resultantly, the appeal stand allowed.

Revenue's Appeal

7. While framing the assessment, Ld. AO computed interest disallowance u/s 36(1)(iii) for Rs.125.66 Lacs. Upon further appeal, Ld. CIT(A) deleted the same by following appellate orders of earlier years. Aggrieved, the revenue is in further appeal before us.

8. It is admitted position that the tax effect of quantum addition under dispute by revenue is less than the prescribed monetary limit of Rs.50 Lacs and therefore, the appeal is not maintainable in terms of low tax effect circular issued by CBDT vide Circular No. 17/2019 dated 08/08/2019 [F.No.279/Misc. 142/2007-TTJ(Pt.). This recent circular further enhances the monetary limit fixed in earlier Circular No.3 of 2018 dated 11/07/2018 issued by CBDT as amended on 20/08/2018. Hence, the appeal stand dismissed with a liberty to revenue to seek recall of the appeal, if at a later stage, it is found that the matter is covered by any exceptions provided in any of the circular or in case the tax effect in any of the appeals exceeds the prescribed monetary limit. The appeal stands dismissed.

Conclusion

9. The assessee's appeal stand allowed whereas the revenue's appeal stand dismissed in terms of our above order.

Order pronounced on 21st January, 2022.

Sd/-	Sd/-
(V.Durga Rao)	**(Manoj Kumar Aggarwal)**
: **Judicial Member**	**Accountant Member**

Chennai; Dated : 21-01-2022