

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 156 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE B.N. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-

2....Appellant(s)

Versus

M/S.JALARAM CERAMICS LTD.,....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 07/03/2017

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income

Tax Appellate Tribunal Ahmedabad “C” Bench, Ahmedabad (*hereinafter referred to as “the learned tribunal”*) in ITA No.2199/Ahd/2012 for the Assessment Year 2006-07 by which the learned tribunal has dismissed the said Appeal preferred by the revenue and has confirmed the order passed by the learned CIT(A) allowing the claim of the assessee for additional depreciation under Section 32(1)(iia) of the Income Tax Act (*hereinafter referred to as “the Act”*), revenue has preferred the present Tax Appeal with the following proposed question of law;

“Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of additional depreciation of Rs.1,33,96,265/-?”

[2.0] The facts leading to the present Tax Appeal in nutshell are as under;

[2.1] The assessee was in the business of manufacturing *ceramic glaze tiles*. The assessee – Company had set up an industrial unit for production of *ceramic glaze tiles*. The assessee also installed windmill through which the production of electricity was done. The assessee claimed additional depreciation under Section 32(1)(iia) of the Act of Rs.1,33,96,265/- at 10% on the cost of windmill. The Assessing Officer denied the same by observing that as the plant and machinery of windmill is controlled by GEB and even the electricity generated through the windmill is also used by GEB, it cannot be said that the plant and machinery so installed is owned by the assessee. Consequently, the Assessing Officer denied the additional depreciation by observing that one of the

condition provided under Section 32(1)(iia) of the Act that the plant and machinery for which additional depreciation is claimed must be owned by the assessee has not been fulfilled. Consequently, the Assessing Officer denied the additional depreciation claimed by the assessee. The Assessing Officer also observed that the assessee cannot be said to be in the business of generating of electricity by installing the windmill.

Feeling aggrieved and dissatisfied with the order passed by the Assessing Officer denying the additional depreciation claimed by the assessee at 10% on the cost of the windmill installed by the assessee, the assessee preferred Appeal before the learned CIT(A). The learned CIT(A) allowed the Appeal preferred by the assessee and held that the assessee is entitled to additional depreciation as claimed on the cost of the windmill acquired and installed by the assessee.

Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), revenue preferred Appeal before the learned tribunal and by the impugned judgment and order the learned CIT(A), relying upon the decision of the learned tribunal in the case of **CIT Vs. Diamines and Chemicals Ltd.** in **ITA No.409/Ahd/2013** for the Assessment Year 2007-08 and the decision of the Madras High Court in the case of **Commissioner of Income Tax Vs. VTM Ltd.** reported in **[2009] 319 ITR 336 (Mad.)**, has dismissed the said Appeal.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned tribunal, revenue has preferred the present Tax Appeal with the aforesaid question of law.

[3.0] Ms. Mauna Bhatt, learned Advocate appearing on behalf of the revenue has vehemently submitted that in the

facts and circumstances of the case the learned tribunal has materially erred in holding that on the cost of windmill the assessee is entitled to the additional depreciation under Section 32(1)(iia) of the Act.

[3.1] It is vehemently submitted by Ms. Mauna Bhatt, learned Advocate appearing on behalf of the revenue that as rightly observed by the Assessing Officer the main business of the assessee was manufacturing *ceramic glaze tiles*, and therefore, it cannot be said that the condition mentioned in Section 32(1)(iia) is complied with. It is further submitted by Ms. Mauna Bhatt, learned Advocate appearing on behalf of the revenue that even otherwise it cannot be said that the windmill in question was as such owned by the assessee. It is submitted that as found and observed by the Assessing Officer the entire control of the plant and machinery /windmill was with the GEB. It is submitted that therefore it cannot be said that the windmill was owned by the assessee for which the assessee is entitled to the additional depreciation claimed under Section 32(1)(iia) of the Act. It is submitted that the additional depreciation under Section 32(1)(iia) of the Act shall be available only in case where the plant and machinery of windmill is owned by the assessee. It is submitted that therefore in the facts and circumstances of the case, the learned tribunal has materially erred in relying upon the decision of the learned tribunal in the case of ***Diamines and Chemicals Ltd.(Supra)*** as well as the decision of the Madras High Court in the case of ***VTM Ltd. (Supra)***. Making the above submissions, it is requested to admit /allow the present Tax Appeal.

[4.0] Heard Ms. Mauna Bhatt, learned Advocate appearing on behalf of the revenue at length. We have perused the impugned judgment and order passed by the Assessing Officer, the learned CIT(A) as well as the impugned judgment and order passed by the learned tribunal. At the outset, it is required to be noted that the assessee claimed the additional depreciation of Rs.1,33,96,265/- at 10% of the cost of the windmill acquired and installed by the assessee. It appears that the assessee – Company set up an industrial unit for production and manufacture of *ceramic glaze tiles*. The assessee also installed a windmill through which the production of electricity was done. It is not in dispute and cannot be disputed that as such the windmill installed by the assessee was in fact acquired and installed by the assessee for generation of electricity. It appears that out of the electricity generated, some electricity was used by GEB. For the aforesaid purpose control of plant and machinery was with the GEB. Merely because control of plant and machinery of the windmill was with GEB, it cannot be said that the assessee was not the owner of the windmill installed. The assessee shall not lose the character of owner solely on the ground that the plant and machinery of windmill was under the control of GEB.

[5.0] Under the circumstances, as such, no error has been committed by the learned CIT(A), which has been confirmed by the learned tribunal, in allowing additional depreciation claimed by the assessee of Rs.1,33,96,265/- at 10% of the cost of windmill installed by the assessee under Section 32(1)(iia) of the Act. Under the circumstances, as such, the learned CIT(A) has rightly relied upon the decision of the learned tribunal in the case of ***Diamines and Chemicals***

Ltd.(Supra). At this stage, it is required to be noted that the decision of the learned tribunal in the case of **Diamines and Chemicals Ltd.(Supra)** is confirmed by the Division Bench of this Court in **Tax Appeal No.1061/2013.** Now, so far as the contention on behalf of the revenue that the assessee cannot be said to be engaged in the business of generation of electricity, and therefore, the assessee is not entitled to additional depreciation on such windmill is concerned, the same has no substance. Considering Section 32(1)(iia) of the Act, what is required to be seen is whether any plant and machinery of windmill has been installed and acquired by the assessee or not and for which the assessee has invested and /or incurred the expenses or not. Once the same is established that the Company has acquired and established the windmill /plant and machinery, the assessee is entitled to the additional depreciation on the cost of such windmill under Section 32(1)(iia) of the Act.

[6.0] In view of the above and for the reasons stated hereinabove, we see no reason to interfere with the impugned judgment and order passed by the learned tribunal. No substantial question of law arises in the present Tax Appeal as sought to be contended on behalf of the revenue. Under the circumstances, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.

(M.R. SHAH, J.)

(B.N. KARIA, J.)

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