

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 485/JP/2018  
निर्धारण वर्ष/Assessment Year : 2011-12

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan Renewable Energy Corporation Ltd., Akshay Urja Bhawan, E-166, Yudhishtir Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL 3171C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by : Ms. Shanmuga Priya (JCIT)  
निर्धारिती की ओर से/ Assessee by : Shri Mukesh Goyal (C.A.)

सुनवाई की तारीख/ Date of Hearing : 05/06/2018  
उदघोषणा की तारीख/ Date of Pronouncement: 07/06/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal filed by the Revenue is directed against the order dated 31.01.2018 of Id. CIT (A), Jaipur for the assessment year 2011-12. The Revenue has raised the following ground:-

*"(i) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in deleting the disallowance of contribution to Energy Conservation Fund of Rs. 1,00,00,000/-*

*made by AO ignoring the fact that contribution towards fund is application of income and not allowable U/s 37(1) of the Income Tax Act, 1961.*

*(ii) The appellant craves its rights to add, amend or alter any of the ground on or before the hearing."*

2. The only issue raised in this appeal of the Revenue is the Contribution made by the assessee to Energy Conservation Fund of Rs. 1,00,00,000/- was disallowed by the AO however, the same was allowed by the Id. CIT(A). The assessee company was nominated as State Designated Agency (SDA) Bureau of Energy Efficiency (BEE) Ministry of Power, Government of India for promote efficient use of energy and its conservation. The energy Department has constituted "Rajasthan State Energy Conservation Fund in terms of the provisions of Energy Conservation Act, 2001 to achieve the objects prescribed in the said Act. The assessee has been contributing to Energy Conservation Fund from time to time. For the year under consideration the assessee has contributed Rs. 1 crores to energy conservation fund which was disallowed by the AO on the ground that it is not an expenditure incurred wholly and exclusively for the business of the assessee but it is an application of income. On appeal, the Id. CIT(A) allowed the claim

of the assessee by following the decision of this Tribunal in assessee own case for the assessment year 2008-09.

3. We have heard the Id. DR as well as the Id. AR and considered the relevant materials on record. At the outset we note that this issue has been consistently dealt with by this Tribunal in assessee's own case for the A.Ys. 2008-09, 2012-13 and 2014-15. For the assessment year 2014-15 the Tribunal vide order dated 19.03.2018 in ITA No. 816/JP/2017 has decided this issue in paras 6 and 7 as under:-

*"6. Ground No. 4 is regarding disallowance made by the AO on account of contribution of Energy Conservation Fund was deleted by the Id. CIT (A).*

*7. We have heard Id. D/R as well as the Id. A/R and considered the relevant material on record. At the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for the assessment year 2008-09 as well as for the assessment year 2012-13 vide order dated 18.8.2017 in ITA No. 88/JP/2016 in para 91 to 94 as under :-*

*"91. In respect of ground No. 7, the Revenue has challenged the action of Id CIT(A) in deleting disallowance of contribution to energy conservation fund of Rs. 1 crore. Brief facts of the case are that the assessee contributed Rs.1 crore to State Energy Conservation Fund to be spent on conservation of energy as and when required. The AO held that the contribution so made is not wholly & exclusively for assessee business of generating renewable energy. He therefore, disallowed the same. On appeal, the Ld. CIT(A) by relying on the decision of Coordinate Bench in assessee's own case in ITA No.983/JP/13 for AY 2008-09 deleted the disallowance.*

92. *The Id AR submitted that the issue is covered by the decision of Hon'ble ITAT in assessee's own case for AY 2008-09. It was further submitted that the contribution is made to Rajasthan State Energy Conservation Fund constituted as per section 16 of the Energy Conservation Act, 2001. The object of the fund is mentioned at Pg 11-12 of the CIT(A) order. The assessee is incorporated with the object of promoting the non conventional and renewable energy sources and therefore the contribution so made is wholly & exclusively for the purpose of business. Otherwise also, any contribution made to a statutory fund is allowable as deduction as held by Supreme Court in case of CIT Vs. New Horizon Sugar Mills Pvt. Ltd. 269 ITR 397 where it was held that amount set apart towards molasses storage reserve fund is to be excluded from assessee's total income on the principle of diversion of income by overriding title. In view of above, CIT(A) has rightly deleted the disallowance and thus the ground of the department be dismissed.*

93. *The relevant finding of the Id. CIT(A) are reproduced as under:-*

*" 5.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The fact of this issue is similar to the fact in assessee's own case for the assessment year 2008-09, appeal No. ITA No. 983/JP/2013. This issue has been decided in favour of the assessee as follow:-*

*"This amount was paid towards energy conversation contribution fund, which is statutory liability as per provisions of Energy Conservation Act, 2001. The case law relied by the assessee of the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs. Raj Shipping and Weaving Mills Ltd. (supra) is squarely applicable in the case of the assessee wherein it has been held that contribution to the fund set up for products which was also the business of the assessee has direct nexus to the advancement of the assessee business."*

*Following the above judgment, the disallowance on account of contribution to energy conservation fund of Rs. 1,00,00,000/- made by the Assessing Officer is directed to be deleted. This ground is allowed."*

*94. Undisputedly, there is no change in the facts and circumstances of the case or any authority which has been brought to our notice subsequent to the decision of the Coordinate Bench in assessee's own case in AY 2008-09. Respectfully following the decision of the Coordinate Bench referred supra, we affirm the findings of the Id CIT(A) and the ground taken by the Revenue is dismissed."*

*Following the earlier order of this Tribunal in assessee's own case, we do not find any error or illegality in the order of Id. CIT (A) qua this issue."*

Accordingly in view of the decision of this Tribunal in assessee's own case and in the absence of any contrary binding precedent, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07/06/2018.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/06/2018.

**\*Santosh.**

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

1. अपीलार्थी / The Appellant- DCIT, Circle-6, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Rajasthan Renewable Energy Corporation Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 485/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar