FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL NO. 19/2016
(THE PR. COMMISSIONER OF INCOME TAX (CENTRAL), NAGPUR **VERSUS** PADMESH GUPTA)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.N. Bhattad and Shri A.J. Bhoot, counsel for the appellant.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.
DATE : SEPTEMBER 07, 2016.

By this income tax appeal, the appellant-Department challenges the orders of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal upholding the claim of the assessee for depreciation of Rs.62,59,456/- due to the generation of the electricity by the windmill.

Admittedly, the respondent-Assessee had purchased a windmill from Suzlon Energy Limited at the cost of Rs.6,25,94,556/- and had started the operation of the windmill for producing electricity during the assessment year under consideration. The assessee claimed additional depreciation on the windmill under Section 32(1)(iia). According to the assessee, the electricity generated during the assessment year had been sold by the assessee to the Maharashtra State Electricity Distribution Company Limited and the said transaction was supported by sale-bills. The Assessing Officer, however, disallowed the claim of the assessee for additional depreciation. It was observed by the Assessing Officer that the assessee had not acquired a new

Plant & Machinery for the purpose of manufacture or production of any article or thing. The order of the Assessing Officer disallowing the claim for the additional depreciation was challenged by the assessee before the Commissioner of Income Tax (Appeals). The appeal filed by the assessee was allowed by the Commissioner of Income Tax (Appeals), by the order dated 24.01.2014. The Commissioner of Income Tax (Appeals) held that the assessee was entitled to claim additional depreciation, in view of the generation of electricity through the windmill. While holding so, the Commissioner of Income Tax (Appeals) relied on the judgment of the Hon'ble Supreme Court in the case of *C.S.T. Versus Madhya Pradesh Electricity Board*, reported in **1970 (25) SCC 188** and the judgment in the case of *State of Andhra Pradesh Versus N.T.P.C.*, reported in **127 STC 280 (SC)**. The Commissioner of Income Tax (Appeals) held that 'electricity' falls within the definition of 'goods' and the process involved is manufacturing or production. Being aggrieved by the order of the Commissioner of Income Tax (Appeals), the department filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal, by the order dated 11.09.2015, dismissed the appeal of the department by upholding the order of the Commissioner of Income Tax (Appeals).

On hearing the learned counsel for the department and on a perusal of the impugned orders, it appears that there is no scope for interference with the impugned orders. The Tribunal relied on the decision of a Coordinate Bench of the Tribunal to hold that the process of generation of electricity is akin to manufacture of an article or a thing though electricity may not be seen with the eyes, as its effect could be seen and felt. It was observed by the Tribunal as also the Commissioner of Income Tax (Appeals) that there was no dispute that the assessee had purchased the windmill and had generated electricity during the relevant assessment year. Since the scope of the word 'production', in Section 32(1)(iia) is wide, the authorities held that the generation of electricity through the windmill would show that the assessee was involved in the production of electricity, which is held to be an article or a thing as per the judgment of the Hon'ble Supreme Court. The authorities held that the assessee had relied on the sale-bills depicting that the electricity generated by the assessee during the relevant assessment year through the windmill was sold to the Maharashtra State Electricity Distribution Company Limited, as per the agreement between the parties. Since additional depreciation under Section 32(1)(iia) is allowable in the case of new Plant & Machinery that is acquired and installed for the purpose of manufacture or production of any article or thing, the authorities held that the assessee was entitled to additional depreciation as it was proved that the assessee had purchased the windmill, had generated the electricity during the relevant assessment year and had sold the same as per the agreement, to the Maharashtra State Electricity Distribution Company Limited. On the basis of the facts that were not disputed, we find that all the clauses of Section 32(1)(iia) have been satisfied for seeking the additional depreciation for the generation of electricity through the windmill that was admittedly purchased by the assessee from Suzlon Energy Limited. The findings recorded by both the authorities are pure findings of facts and they do not give rise to any substantial question of law. The judgment reported in **AIR 1993 SC 2529** (*Commissioner of Income-tax, Orissa, etc. Versus M/s N.C. Budharaja & Company and another*) and relied on by the counsel for the department, cannot be helpful to the department for effectively challenging the orders of the Income Tax Authorities. In fact, it is observed by the Hon'ble Supreme Court in the said judgment that the word 'production' has wider connotation than the word 'manufacture' and while every manufacture can be categorized as production, every production need not amount to manufacture. Since the Income Tax Authorities have recorded a clear finding of fact that the assessee had produced electricity during relevant assessment year with the help of the windmill that was purchased from Suzlon Energy Limited and the electricity so generated was sold by the assessee to the Maharashtra State Electricity Distribution Company Limited, all the ingredients of Section 32(1)(iia) were satisfied, for seeking additional depreciation.

Since the orders of the Commissioner and Tribunal are just and proper and since no substantial question of law arises in this income tax appeal, we dismiss the appeal with no order as to costs.

JUDGE **JUDGE**

APTE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

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