IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1820 OF 2016

The Pr. Commissioner of Income Tax-9, Mumbai : Appellant.
Versus
M/s. Dodson Lindblom Hydro Power Pvt. Ltd. : Respondent.

WITH
INCOME TAX APPEAL NO.1821 OF 2016

The Pr. Commissioner of Income Tax-9, Mumbai : Appellant.
Versus
M/s. Dodson Lindblom Hydro Power Pvt. Ltd. : Respondent.

WITH
INCOME TAX APPEAL NO.1840 OF 2016

The Pr. Commissioner of Income Tax-9, Mumbai : Appellant.
Versus
M/s. Dodson Lindblom Hydro Power Pvt. Ltd. : Respondent.

Mr. Tejveer Singh for the Appellant.
Mr. Madhur Agrawal a/w Mr. Bharat Damodar I/by Kanga & Co. for the Respondent.

CORAM : AKIL KURESHI &
M.S.SANKLECHA, JJ.

DATE : FEBRUARY 27, 2019.

P.C.:

1 All these appeals have been filed by the Revenue challenging the orders passed by the Income Tax Appellate Tribunal.

2 The issues involved in these Appeals are common. The

Respondent-Assessee in all these Appeals is also common. We may refer to facts from Income Tax Appeal No.1820 of 2016.

3 Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007-2008. Revenue has urged the following questions for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?

4 Though two questions are framed, singular issue is whether the receipts of the Assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore not liable to tax. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of ***Commissioner of Income Tax v/s. My Home Power Ltd*** reported in ***(2014) 365 ITR 82 (AP)*** holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of ***Commissioner of Income Tax v/s. Subhash Kabini Power Corporation Ltd***. reported in ***(2016) 385 ITR 592 (Karn)*** and followed by

Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of ***Principal Commissioner of Income Tax v/s. L H Sugar Factory Pvt. Ltd*** reported in ***(2017) 392 ITR 568 (All)***).

5 In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence not entertained. The Income Tax Appeals are dismissed.

[M.S.SANKLECHA,J.] **[AKIL KURESHI, J]**