

HC grants Sec. 80-IA relief on gains attributable to captive consumption of power generated from windmill

Summary – The High Court of Madras ITAT in a recent case of Cethar Ltd., (the Assessee) held that Assessee was entitled to claim of deduction under section 80-IA in respect of income relating to power generated by its own wind mill that was consumed by assessee

Facts

- The assessee company was a manufacturer of Boilers and in the business of generation of electricity through wind mills.
- In the re-assessment proceedings, the Assessing Officer held that the assessee had claimed benefit of deduction under section 80-IA on the amount of Rs. 38.79 lakhs, whereas the assessee was eligible for deduction under section 80-IA only on actual sale of power to Electricity Board, *i.e.*, 13,36,848 and disallowed the remaining amount.
- On appeal, the Commissioner (Appeals), who concurred with the decision of the Assessing Officer, dismissed the appeal.
- On second appeal, the Tribunal agreed with the contentions of the assessee allowed the appeal holding that the assessee was deriving income from generation of electricity. The Tribunal also held that the assessee instead of getting cash benefit, was getting credit for the units supplied to the Government agency and thus it could not be said that the income earned by the assessee by supplying the units to the Electricity Board fell within the meaning of term 'attributable to'.
- On appeal:

Held

- In *Thiagarajar Mills Ltd.* T.C. (A) Nos. 68 to 70 of 2013, dated 7-6-2010, this Court, held that there is no difficulty in holding that captive consumption of the power generated by the assessee from its own power plant would enable the assessee to derive profits and gains by working out the cost of such consumption of power inasmuch as the assessee is able to save to that extent which would certainly be covered by section 80-IA(1). When such will be the outcome out of own consumption of the power generated and gained by the assessee by setting up its own power plant, there is no lack of merit in the claim of the assessee when it claimed by relying upon section 80-IA(1) by way of deduction of the value of such units of power consumed by its own plant by way of profits and gains for the relevant assessment years.
- Accordingly, the questions of law are answered in favour of the assessee and against the revenue.