IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF SEPTEMBER, 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MRS.JUSTICE RATHNAKALA

INCOME TAX APPEAL NO.8 OF 2014

BETWEEN:

1. COMMISSIONER OF INCOME-TAX-III,
QUEENS ROAD,
BANGALORE.

2. DEPUTY COMMISSIONER OF INCOME-TAX,
CIRCLE – 12(4),
14/3, 4TH FLOOR,
OPP: RBI NRUPATUNGA ROAD,
BANGALORE - 1.

…APPELLANTS

(BY SRI E.I.SANMATHI, ADV.)

AND:

THE HUTTI GOLD MINES CO.LTD.,
3RD FLOOR, NATIONAL GAMES VILLAGE,
KHB SHOPPING COMPLEX,
KORAMANGALA,
BANGALORE – 47.
PAN: AABCT 4338 C

…RESPONDENT

(BY SRI A.SHANKAR AND SRI M.LAVA, ADVS.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02-08-2013 PASSED IN ITA NO.832/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING THIS HON'BLE COURT TO:

DECIDE THE FORGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED:02/08/2013 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, IN APPEAL PROCEEDINGS NO. I.T.A.NO.832/BANG/2012 FOR ASSESSMENT YEAR 2008-09.

THIS ITA COMING ON FOR ADMISSION THIS DAY, ***N.KUMAR J.***, DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is preferred by the Revenue challenging the order passed by the Tribunal, holding that the assessee in addition to carrying on the business of gold mining is also in the business of generation of electricity through windmill as second line of business and therefore, he is entitled to grant an additional depreciation under the statute. The Tribunal also went into the question as to, '*Whether Section 32(1)(iia) of the Income Tax Act, 1961, includes the business of generation and distribution of power to avail the benefit of additional depreciation?* and the same was held against the Revenue.

2. The facts in brief are:

The assessee is a company engaged in the business of gold mining extraction and windmill power generation. A return was filed on 27.09.2008, declaring total income of Rs.1,30,06,59,847/-. The case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961, was issued on 13.08.2009. In the course of the scrutiny assessment, it was noticed by the Assessing Officer that the assessee on 23.01.2008, had erected and commissioned the windmill of power generation capacity of 4.5 MW. The cost of the windmill was Rs.27,58,72,617/-. The assessee apart from claiming normal rate of depreciation of 80% also claimed additional depreciation at 10% amounting to Rs.2,75,87,268/-. The said additional depreciation was not allowed by the assessing authority. The assessee preferred an appeal against the said order. The Commissioner of Income Tax (Appeals) allowed the appeal and directed the assessing authority to allow the aforesaid depreciation.

Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal. The appeal was dismissed by the Tribunal.

3. The material on record shows that the assessee is generating electricity through windmill as a second line of business. It is a product of the assessee company. It is covered under the words “article” or “thing”, which is tradable / identifiable. In other words, the electricity falls within the definition of Sale of Goods Act, 1930, and process of generation of electricity is akin to manufacture or production of an “article” or “thing”. The power generated need not necessarily be used in the production of assessee’s own products namely mining and extraction of gold. The use of electricity in the manufacturing activity of the core business of the assessee is not a precondition for the grant of additional depreciation under the statue. Therefore, we do not see any merit in this appeal. Accordingly, this appeal is rejected.

4. However, we have not gone into the question of applicability of Section 32(1)(iia) of the Income Tax Act, 1961,

and the question as to whether clarificatory or not is kept open to be decided at proper time.

Sd/-
JUDGE

Sd/-
JUDGE

nvj