IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

T.C.A.No.1003 of 2015

Commissioner of Income Tax VII
No.121, Mahatma Gandhi Road,
Chennai – 600 034. ... Appellant/Appellant

vs.

M/s.Texonic Instruments
No.9, Athipattan Street,
Mount Road, Chennai. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 13.05.2015 made in I.T.A.No.3103/Mds./2014 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench for the assessment year 2010-11 against the order of the Commissioner of Income Tax (Appelas)-II, Chennai 34, dated 21.08.2014 and made in ITA No.314/2013-14 for the Assessment year 2010-11 against the order of the Income Tax Officer, Business Ward VII (3), Chennai 34 dated 07.03.2013 and made in AAA FT 1650 M for the Asessment year 2010-11.

For Appellant : Mr.T.R.Senthil Kumar
For Respondent : Mr.N.Devanathan

J U D G M E N T

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 13.05.2015, made in ITA No.3103/Mds/2014 against the order of the Commissioner of Income Tax (Appeals) II, Chennai 34, dated 21.08.2014 and made in ITA No.314/2013-14 for the Assessment year 2010-11 against the order of the Income Tax Officer, Business ward VII (3), Chennai 34, dated 07.03.2013 and made in AAAFT1650M for the Assessment year 2010-11.

2. The brief facts, which are necessary for the disposal of the above case, are as follows:-

The Assessee is a dealer of Electronic components and also enagaged in the generation of power, through windmills. The Assessee had filed return of income, for the Assessment Year 2010-11, on 28.09.2010, declaring a total income of Rs.9,98,770/-. The Assessee claimed deduction of Rs.1,96,79,094/-, under Section 80IA of the Income Tax Act, 1961, (hereinafter referred to as “the Act”) on the income got from the wind energy division. The case of the assessee was selected for scrutiny assessment and a notice, under Section 143(2) of the Act, was issued and served on the assessee.

2.1. The Assessing Officer disallowed Rs.1,96,79,094/-, being the deduction claimed by the assessee,under Section 80IA of the Act holding that the initial assessment year is 2006-2007, the year from which the assessee commences eligible business and since no profits were available for deduction in the financial year relevant to the assessment year 2010-11, after notionally bringing forward the unabsorbed depreciation and business losses.

2.3. Aggrieved by the order of the Assessing Officer, the assessee had filed an appeal, before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) had held that the issue is covered by a decision of this Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. vs. Assistant Commissioner of Income Tax, [2012] 21 taxmann.com 95 (Mad.), and that, in the absence of any stay granted by the Hon 'ble Apex Court, against the operation of the judgment of this Court, all the Judicial and Quasi-Judicial authorities are bound to follow the decision of this Court. In view of the said findings, the claim of the assessee was allowed.

2.4. Challenging the order of the Commissioner of Income Tax (Appeals), the Revenue had filed an appeal before the Income Tax Appellate Tribunal. The Tribunal had dismissed the appeal. Challenging the same, the appellant has filed this Appeal, under Section 260A of the Act, raising the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that the assessee is entitled to claim deduction under Section 80IA of the Income Tax Act, 1961?
>
> 2. Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that initial assessment year in Section 80IA(5) of the Act would only mean the year of claim and not the year of commencement?
>
> 3. Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that the brought forward business losses and unabsorbed depreciation of the earlier years which had already been absorbed cannot be notionally carried forward and taken into consideration for computing deduction under Section 80IA of the Act?"

3. The contention of the appellant is that the Tribunal has failed to appreciate the explanation in the memorandum, in Finance [No 2] Bill 1980 [123 ITR (St.) 154], explaining that the quantum of tax holiday profits for the unit is to be determined as if such units were independent units owned by the taxpayer.

3.1. It is further contended, by the appellant, that the Tribunal had erred in holding that the losses and unabsorbed depreciation, which already stood set off against the other income, in earlier years, could not be carried forward and set off against profits or income of initial / subsequent years, in respect of windmill, in computing the deduction, under Section 80IA of the Act.

3.2. It is further submitted, by the appellant, that as per the provisions of Section 80IA(5) of the Act, the undertaking eligible for deduction, under the said section, should be treated as the only source of income, for computing the quantum of deduction; the Tribunal should have observed the fact that a restriction has been incorporated in sub-section 5 of Section 80IA of the Act, as it starts with a non-obstante clause and the same would prevail and the deduction under section 80IA of the Act has to be restricted accordingly.

3.3. Yet another contention is that the decision made by this court, in the case of Velayudhaswamy Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad), has been challenged before the Supreme Court of India and the matter is pending disposal; while so, the Tribunal ought not have followed the decision of this court, made in the case of Velayudhaswamy Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad).

4. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the decision rendered in Velayudhaswamy Spinning Mills (P) Ltd. vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad) squarely applies to the facts of the present case; a Division Bench of this court had rendered a similar decision in Commissioner of Income Tax, Circle I, Tirupur vs. R.Yuvaraj (2015) 57 Taxmann.com 252 (Madras). In view of the above decisions, the appeal filed by the Revenue is liable to be dismissed, as it is devoid of merits.

5. We have heard the learned counsel appearing on behalf of the appellant, as well as the respondent. We have also perused the records available before this court.

6. It is noted that the facts and circumstances based on which the present appeal had arisen are similar to those which had already been decided by this court, in the cases, cited

supra. Further, in a batch of cases, in CIT Vs. Eastman Exports Global Clothing (P) Ltd. (2015) 229 Taxman 449/54 Taxmann.Com 408 (Madras), this court had followed the decision rendered in Velayudhaswamy Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad), and had decided the matter in favour of the assessee and against the Revenue. Taking note of the above said decisions, we are constrained to dismiss the present appeal filed by the Revenue, confirming the order passed by the Tribunal, dated 29.05.2015. Accordingly, the questions raised in the appeal are answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Income Tax VII,
 No.121, Mahatma Gandhi Road,
 Chennai - 600 034.

2. The Income Tax Appellate Tribunal,
 'B'Bench, Chennai 34.

3. The Commissioner of Income Tax(Appeals)II, Chennai.

4. The Income TAx Officer,
 Business Ward VII(3),
 Chennai 34.

T.C.A.No.1003 of 2015

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