IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2015

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The Honourable Mr.Justice M.JAICHANDREN
and
The Honourable Mrs.Justice S.VIMALA

Tax Case (Appeal) No.1187 of 2015

Commissioner of Income Tax
Corporate Circle-3(2)
Chennai. ... Appellant/Appeal

-vs-

M/s.Ucal Fuel Systems Limited
Raheja Towers 7th Floor, Unit 705,
No.177, Anna Salai,
Chennai 600 002. ... Respondent/Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, Chennai, dated 26.6.2015 in ITA No.532/MDS/2015 against the order of the Deputy Commissioner of Income Tax, Corporate Circle-3(2) Chennai, dated 14.01.2015 and made in GIR No./PAN AAACU 0541K; and against the order of the Income Tax Officer, Company ward-III (1 Chennai dated 12.03.2014 and made in GIR/No.PAN AAACU 0541K.

For appellant : Mr.M.Swaminathan

J U D G M E N T

(Judgment of the Court was made by M.Jaichandren,J)

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal “D” Bench, Chennai, dated 26.6.2015, made in I.T.A.No.532/MDS/2015.

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

2.1) The assessee company had been engaged in the manufacturing of carburettor fuel pumps for two wheelers and four wheelers. It had filed its return of income, for the assessment year 2010-2011, declaring a taxable income of Rs.1,89,77,050/-.

2.2) The assessee company had started its wind mill division in Palladam and had used the power produced in its Maramalai Nagar Manufacturing Division. The assessee had claimed deduction, under Section 80IA, on the profit of Palladam Unit, from the assessment year 2005-06. The case was selected for scrutiny. A notice, under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as `the Act'), had been issued.

2.3) The assessee company, having undertaken international transactions with its Associated Enterprises, for more than Rs.15 Crores, the case had been referred to Transfer Pricing Officer, with the approval of the Commissioner of Income Tax-III, Chennai. A Transfer Pricing Order had been received, on 15.11.2011, with an upward adjustment of Rs.4,75,05,574/-. A draft assessment order had been issued to the assessee, after taking into account the order of the Transfer Pricing Officer on 12.3.2014, by making the disallowance of claim of exemption of Rs.91,35,188/-, under Section 80IA of the Act. The above disallowance was made, as per the provisions of Section 80IA(5) of the Act, as the carried forward unabsorbed depreciation would still be available for setting off and the assessee company would not have earned profits and thus become ineligible to claim deduction under Section 80IA.

2.4) Aggrieved by the draft assessment order, the assessee company had filed a petition before the Dispute Resolution Panel, in DRP/CHE/25/2014-15. The Dispute Resolution Panel had passed an order, on 24.12.2014, deleting the addition on disallowance of claim, under Section 80IA of the Act, relying on the decision of the Income Tax Appellate Tribunal, made in Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368), and the order of the Hon'ble Chennai Income Tax Appellate Tribunal, in the case of M/s.GRT Firm and others, in ITA No.528 to 530/Mds/2012, dated 4.6.2012.

2.5) Aggrieved by the order passed by the Dispute Resolution Panel, the department had preferred an appeal before the Income Tax Appellate Tribunal, in I.T.A.No.532/Mds/2015. The Tribunal, by its order, dated 26.6.2015, had dismissed the appeal filed by the department, following the decision of this court, in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368).

3. Challenging the order of the Tribunal, dated 26.6.2015, the Department has filed the present appeal, before this Court, under Section 260A of the Act, raising the following substantial questions of law.

> "1. Whether on the facts and circumstances of the case, the Appellate Tribunal was in right in allowing the deduction under Section 80IA of the Income Tax

Act, when there is no positive income from the Industrial undertaking during the initial assessment year?

2. Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal was right in holding that the assessee is entitled to deduction under Section 80IA following the decision of the Jurisdictional High Court in the case of M/s.Velayudhaswamy Spinning Mills (340 ITR 477) when the same is pending appeal before the Hon'ble Supreme Court in S.L.P.Civil No.1136/11?

3. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the initial assessment year to Section 80IA(5) would only mean the year of claim of deduction under section 80IA and not the year of commencement of eligible business?"

4. The learned counsel appearing on behalf of the Department had raised the following grounds, while challenging the impugned order of the Tribunal:-

"A. The order of the Income Tax Appellate Tribunal is erroneous in law and opposed to the facts and circumstances of the case.

B. The Income Tax Appellate Tribunal erred in holding that the assessee is entitled to deduction under section 80IA.

C. The Income Tax Appellate Tribunal erred in allowing the deduction u/s 80IA of the Income Tax Act when there is no positive income from the industrial undertaking during the financial assessment year.

D. The Income Tax Appellate Tribunal ought to have appreciated that as per Section 80IA(5) the undertaking eligible for deduction u/s 80IA should be treated as only source of income for computing the quantum of deduction.

E. The Income Tax Appellate Tribunal erred in following the decision of Jurisdictional High Court in the case of M/s.Velauyuthasamy Spinning Mills when the same is in appeal before the Hon'ble Supreme Court.

F. The Income Tax Appellate Tribunal ought to have observed that since sub-section 5 of Section 80IA starts with a non-obstante clause, the restriction put in sub-section 5 will prevail and deduction under 80IA has to be restricted accordingly.

G. The Income Tax Appellate Tribunal ought to have appreciated that as per provisions of section 80IA(5) the undertaking eligible for deduction should be treated as only source of income for computing the quantum of deduction."

5. We have heard the learned the counsels appearing on behalf of the appellant. 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. 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, (231 CTR (Mad.) 368), 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 26.6.2015. Accordingly, the questions of law 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 II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
IIIrd Floor Rajaji Bhavan, Besant Nagar,
"D" Bench, Chennai.90

2. The Deputy Commissioner of
Income Tax Corporate Circle-3(2) Chennai

3. The Income Tax Officer, Company Ward III (1) Chennai.

+ 1 cc to M/s. M. Swaminathan, Advocate r.67170
+ 1 cc to Mr.S. Sridhar, Advocate SR.68147

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