

In the High Court of Judicature at Madras

Dated: 17.03.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR
and

The Honourable Mr.JUSTICE R.KARUPPIAH

Tax Case (Appeal) Nos.121 and 122 of 2015
& M.P.No.1 of 2015

The Commissioner of Income Tax
Trichy.

..... Appellant in the both TCs

Vs.

M/s.Atlas Export Enterprise,
No.29-J, Pugalur Road,
Karur - 639 001.

..... Respondent in the both TCs

Appeals under Section 260A of the Income Tax Act against the order dated 26.06.2014 made in I.T.A.Nos.154&155/Mds/2014 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment years 2005-06 and 2006-07.

against order dated 7.10.2013 in ITA.No.192/10-11/CIT(A) TRY and ITA No.191/10-11/CTI(A)/TRY on the file of the Commissioner of Income Tax (Appeals) cantonment, Tiruchirapalli and against the order dated 13.12.2010 passed by the Additional Commissioner of Income Tax, Range II Williams Road, Cantonment, Tiruchirapalli for the Year 2005-2006 & 2006-2007.

For Appellant : Mr.J.Narayanasamy
Standing Counsel

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order dated 26.06.2014 made in I.T.A.Nos.154&155/Mds/2014 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment years 2005-06 and 2006-07 raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the generation of electricity by wind mill amounts to production of an article or thing and consequently holding that the assessee is entitled for additional depreciation as per Section 32(1)(iia)?"

2. The brief facts of the case in a nutshell are as follows:

The assessee is a partnership firm engaged in the business of textiles and generation and distribution of power. The assessee filed return of income claiming additional depreciation on windmill. The Assessing Officer disallowed the assessee's claim of additional depreciation on windmill under Section 32(1)(iia) of the Income Tax Act holding that the assessee failed to satisfy one of the condition, namely, the assessee should be engaged in the business of manufacture and production of an article or a thing. The Assessing Officer further held that the production of electricity through windmill was not production of an article or thing. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by following the decisions of this Court in the case of CIT V. VTM Ltd. and CIT V. Hi Tech Arai Ltd., allowed the appeal. As against the same, the Revenue preferred an appeal before the Income Tax Appellate Tribunal, which dismissed the appeal following the decision of this Court in the case of CIT V. VTM Ltd. It is stated by the Tribunal that as against the said decision of this Court, the Revenue preferred an appeal before the Supreme Court and the Supreme Court dismissed the same in the SLP stage itself. Hence, the Tribunal held that no material has been brought on record to show that the said decision of this Court in the case of CIT V. VTM Ltd. has been either modified or reversed by the Supreme Court.

3. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

4. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

5. In the decision reported in [2010] 321 ITR 477 (Mad) (COMMISSIONER OF INCOME-TAX v. HI TECH ARAI LTD.), this Court, while considering the scope and application of Section 32(1)(iia) of the Income Tax Act, held as follows:

"As far as application of section 32(1)(iia) of the Act is concerned, what is required to be satisfied in order to claim the additional depreciation is that the setting up of a new machinery or plant should have been acquired and installed after March 31, 2002 by an assessee, who was already engaged in the business of manufacture or

production of any article or thing. The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed up to March 31, 2002, should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds, etc., is totally not germane to the specific provision contained in section 32(1)(iia) of the Act.

6. In such circumstances, we are not able to appreciate the contention of the learned standing counsel for the appellant on the ground that the order of the Commissioner of Income-tax (Appeals) as confirmed by the Tribunal should be interfered with. It cannot also be said that setting up of a wind mill will not fall within the expression setting up of a new machinery or plant. We do not find any error in the conclusion of the Tribunal in confirming the order of the Commissioner of Income-tax (Appeals). We, therefore, do not find any question of law much less substantial question of law to entertain these appeals. These appeals fail and the same are dismissed. Consequently, M.P.No. 1 of 2009 is also dismissed."

6. The facts in the present case are no different from the above-said decision. In the present case, the core business of the assessee is manufacturing and export of textile goods. During the assessment year 2006-07, the assessee had entered into the business of generation of power and installed one wind mill. The assessee maintained separate books of accounts for export division and the wind mill division. Since the assessee has treated the windmill division as separate business, the claim of additional depreciation has to be seen in the context of generation of power through windmill only and the production of textiles and its export has nothing to do with the generation of power for the purpose of considering additional depreciation. Further as rightly held by the Tribunal, the Revenue has not brought in any new or contra material to differ from the view of this Court in the decision reported in [2010] 321 ITR 477 (Mad) (COMMISSIONER OF INCOME-TAX v. HI TECH ARAI LTD.).

7. Accordingly, following the above-said decision of this Court, we find no infirmity in the order passed by the Tribunal. We, therefore, do not find any question of law much less substantial question of law to entertain these appeals.

In the result, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl

To

1. The Income Tax Appellate Tribunal Madras 'B' Bench
2. The Commissioner of Income Tax (Appeals), Tiruchirappalli.
3. The Additional Commissioner of Income-tax, Range - II, Trichy.

2 cc to Mr.J.Narayanasamy ,Advocate, SR.No.14946, 14945

T.C.(A) Nos.121 and 122 of 2015
& M.P.No.1 of 2015

sr(co)

pmk.8.4.2015



WEB COPY