IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

T.C.A. NO. 309 OF 2015

Commissioner of Income Tax
Trichy. .. Appellant

- Vs -

M/s.Alpha Mills Pvt. Ltd.
Atlas Chambers
29-J, Pugalur Road
Karur. .. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 20.06.2014 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, made in ITA No.121/Mds/2014.

against the order dated 7.10.2003 passed by the Commissioner of Income Tax (Appeals) Tiruchirappalli, made in ITA No.227/10-11/CIT (A)/TRY.

against the order dated 20.12.2010 passed by the Deputy Commissioner of Income Tax, Company Circle I, Trichy, made in GIR No./PAN.AAACA 5661Q

For Appellant : Mr. J.Narayanasamy

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the appellant/Revenue is before this Court by filing the present appeal raising the following questions of law :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claiming of higher depreciation in the return of income by the assessee on or before due date for filing return is to be deemed as exercising of option for higher depreciation as per proviso to Rule 5 (1A) and therefore the assessee is entitled for higher depreciation?"

2. The facts, in a nutshell, are as hereunder :-

The assessee filed return of income on 30.11.06 claiming depreciation on windmill at the rate of 80%. The assessee also claimed additional depreciation under Section 32 (1)(iia) of the Act. The assessment, which was completed under Section 143 (3) on 26.11.08, was reopened under Section 147, and reassessment was completed under Section 143 (3) r/w 147 of the Act on 20.12.2010 by restricting the claim of depreciation at 7.69% instead of 80% as claimed by the assessee on the ground that the assessee had not exercised its option for claiming higher depreciation before the due date for filing of return as required under proviso to Rule 5 (1A) of the Income Tax Rules and also disallowed the additional depreciation claimed by the assessee. Aggrieved against the said order, the assessee preferred appeal to the CIT (Appeals), who allowed the claim in favour of the assessee. As against the said order, the Revenue preferred appeal to the Tribunal, which upheld the order of the CIT (Appeals) against which the present appeal is filed.

3. When the matter was taken up, learned standing counsel appearing for the appellant/Revenue fairly submitted before this Court that the issue raised in this appeal is squarely covered by the judgment of this Court in the the case of Kikani Exports Pvt. Ltd. - Vs - Commissioner of Income Tax (TCA Nos.330 of 2010, etc. Batch dated 09.09.20143), wherein this Court held that if the assessee had exercised the option in terms of second proviso to Rule 5 (1A) of the Income Tax Rules at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to of exercise of option is required. It was also further held that if the claim for additional depreciation under Section 32 (1) of the Act is filed in time, then the assessee would be entitled to claim the relief as well. Accordingly, the issue was held in favour of the assessee and against the Revenue.

4. In the case on hand, this Court finds that the assessee had exercised its option in terms of second proviso to Rule 5 (1A) of the Income Tax Rules at the time of furnishing of return of income and also further claimed additional depreciation under Section 31 (1) of the Act in time and, therefore, the issue raised in this appeal is squarely covered by the decision in Kikani Export's case (supra). This Court is in agreement with the proposition of law laid down in

Kikani Exports case (supra) and, accordingly, this appeal is liable to be dismissed. Accordingly, the issue is answered in favour of the assessee and against the Revenue. The appeal, filed by the appellant/Revenue, fails and the same is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Income Tax Appellate Tribunal
   Madras 'A' Bench
   Chennai.

2. The Commissioner of Income Tax
   Trichy.

3. The Deputy Commissioner of Income Tax,
   Company Circle-I, Trichy.

T.C.A. NO. 309 OF 2015

GP(CO)
EU(20/08/2015)