In the High Court of Judicature at Madras

Dated: 23.07.2015

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The Honourable Mr.JUSTICE R.SUDHAKAR

and

The Honourable Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.415 of 2015

Commissioner of Income Tax,
Chennai. .... Appellant

Vs.

M/s.PMP Textiles Spinning Mills Ltd.,
235 Mint Street, Park Town,
Chennai - 600 003.
.... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 07.03.2013 made in I.T.A.No.812/Mds/2011 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai against the order of Commissioner of Income Tax (Appeals) V, Chennai-34, dt 31.01.2011 in ITA No.170/2007-08 & 125/2008-09 and arising out of the Assessment Order of Income Tax Officer (OSD) Company Circle V(2) Chennai-34 dt 31.10.2007 in PAN-AAACP4346D.

For Appellant : Mr.T.R.Senthilkumar
Standing counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that, the assessee has satisfied the requirement of second proviso to Rule 5(1A) of the Income Tax Rules, and they are entitled for depreciation on windmills as per Appendix I is valid?

ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the proviso to section 32(1)(i) and Rule 5(1A) clearly stipulate that only rate of depreciation on the method as provided for in Appendix I A will be relevant for power generating Machinery?

iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the assessee is entitled at the rate of 7.69% of the cost and this rate has correctly been allowed by the assessing officer?

iv) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled for higher rate of depreciation even though the assessee had filed return of income within the due date and has also not exercised its option separately?

v) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in not adjudicating the grounds of appeal of the Revenue, regarding completion proceedings by the Commissioner of Income Tax (Appeals) in violation of Rule 46A of the Income Tax Rules?"

2. The issue involved in this Tax Case (Appeal) relates to the claim of depreciation by the assessee on the installation of windmill, which according to the Revenue is contrary to Rule 5(1A) Appendix 1A of the Income Tax Rules.

3. Learned Standing counsel appearing for the Revenue submits that the above-said issue is covered by a decision of this Court dated 09.09.2014 made in T.C.(A)Nos.330 of 2013 etc. batch.

4. In the above-said decision, this Court, following the decision of the Bombay High Court reported in 229 ITR 772 (CIT V. Vijaya Hirasa Kalamkar (HUF), held as follows:

"20. A reading of the above-said decision of the Bombay High Court makes it clear that if the assessee 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. Since the returns are filed in accordance with Section 139(1) of the Income Tax Act and the form prescribed therein make a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required, as contended by the Department. We are in agreement with the reasoning of the Tribunal.

21. Accordingly, the question of law is answered in favour of the assessee and against the Revenue."

5. Following the above-said decision of this Court, the substantial questions of law Nos.1 to 4 are answered in favour of the assessee and against the Revenue.

6. Since the issue has already been decided in favour of the assessee, the fifth question of law does not require to be answered, as the same is with regard to the opportunity to be given to the Revenue.

In the result, this Tax Case (Appeal) stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner of Income Tax, Chennai.

2. The Commissioner of Income Tax (Appeals)-V, Chennai.

3. The Income-tax Officer (OSD), Company Circle-V(2),
Chennai.

4. The Assistant Registrar, Income Tax Appellate Tribunal, IIInd floor, Rajaji Bhavan, Besant Nagar, Chennai-90

+1 cc to Mr.T.K.SenthilKumar Advocate & sr.Standing Counsel for Income Tax sr.37689

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aa07/08/2015