IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

C O R A M

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

Tax Case (Appeal).No.442 of 2015

Commissioner of Income Tax
Trichy ...Appellant/Appellant

Vs

M/s.Mallow International
S.F.No.535, Semmadai Road,
Salem, Bye Pass Road
Karur-639 006
PAN:AABFM1014B ...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 "B" Bench dated 19.12.2014 in ITA.No.152/Mds/2014, against the order of the Commissioner of Income Tax (Appeals) Tiruchirappalli, made in ITA No.194/10-11/CIT (A)/TRY dated 23.10.2013, against the order of the Additional Commisssioner of Income Tax, Range II, Tiruchirapalli, in PAN /GIR Noo.AABFM1014B, date of order 13.12.2010.

For appellant : Mr.J.Narayanaswamy
Standing Counsel for Income Tax Dept.

For respondent : Mr.R.Venkata Narayanan

JUDGMENT
(Delivered by R.SUDHAKAR, J.)

This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Madras "B" Bench dated 19.12.2014 in ITA.No.152/Mds/2014 for the assessment year 2006-2007.

2. The Revenue seeks admission of the Tax Case (Appeal) by 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 generation of electricity by wind mill amounts to production of an article or thing and consequently holding that the assessee for additional depreciation u/s.32(1)(iia). "

3. The facts in a nutshell are as under:-

The assessee is a firm engaged in manufacture and export of textile goods and generation of power using wind energy. The assessee in its return of income for the assessment year 2006-2007 claimed additional depreciation on windmill to the tune of Rs.35,97,603/-. The Assessing Officer vide assessment order dated 13.12.2010 rejected the claim of additional depreciation u/s.32(1)(iia) of the Income Tax Act, 1961 (hereinafter referred to as "Act"). Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The CIT(Appeals), by following the decisions of jurisdictional High Court in the case of CIT Vs. M/s.VTM Limited reported in 319 ITR 336 (Mad) and CIT Vs. M/s.Hi Tech Arai Limited reported in 321 ITR 477 (Mad) accepted the plea of assessee and allowed additional depreciation u/s.32(1)(iia) of the Act. Against the said, the Revenue has filed appeal before the Income Tax Appellate Tribunal.

4. It is a matter of record that the Tribunal in this case has followed the decision of jurisdictional High Court in the case of CIT Vs. Hi Tech Arai Limited [321 ITR 477] and pointed out in paragraphs 6 and 7 as under :-

> "6. The Hon'ble Madras High Court in the case of CIT Vs. Hi Tech Arai Ltd., reported in 321 ITR 477 (Mad) has held that where the assessee has set up windmill in addition to some other existing business, and is engaged in the generation of electricity, the assessee is entitled to claim additional depreciation on the same.
>
> 7. We find that the issue in appeal is squarely covered in favour of the assessee by the aforesaid decisions of the Hon'ble Madras High Court and the co-ordinate Bench of the Tribunal. We do not find any infirmity in the impugned order."

5. Since, the Tribunal, by following the jurisdictional High Court decision in the case of CIT Vs. Hi Tech Arai Limited [321 ITR 477], had given a finding that the issue before it is squarely

covered in favour of the assessee and that the assessee is entitled to claim additional depreciation u/s.32(1)(iia) of the Act, no question of law arises for consideration in this appeal. Accordingly, the Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional Commissioner of Income-AX Range-II
   No.44, Williams Road, Cantonment,
   Tiruchirappalli.

2. The Commissioner of Income Tax,
   Trichy.

3. The Commissioner of Income Tax (Appeals),
   No.44, Williams Road,
   Cantonment, Tiruchirappalli.

4. The Income Tax Appellate Tribunal,
   "B" Bench, Chennai.

1 CC to Mr.J.Narayanaswamy, Advocate SR.No. 37255

1 CC to Mr.R.Venkata Narayanan, Advocate SR.No. 37258

T.C(A).No.442 of 2015

AK (CO)
PSI (18.08.2015)