IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) No.694 of 2015

Commissioner of Income Tax
No.63, Race Course Road
Coimbatore. ...Appellant

-vs-

M/s.India Dyeing Mills Pvt.Ltd.,
No.16-17, Kumar Nagar
South 2nd Street
Tirupur 641 603. ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 04.02.2015 passed in ITA No.1217/Mds/2014, against the order passed by the Commissioner of Income Tax (Appeals) II, Coimbatore, dated 31.12.2013 made in IT Appeal No.224/11-12, against the order passed by the Joint Commissioner of Income Tax, Tirupur Range, Tirupur, dated 25.12.2011 for the Assessment year 2009-2010.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax Department

JUDGMENT

(The Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is by the Revenue, raising the following substantial questions of law:

"1. Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal right in law in holding that assessee is entitled to deduction under Section 80IA without setting off the losses/unabsorbed depreciation pertaining to the windmill, which were set off in the earlier year against other business income of the assessee, following the decision of the Jurisdiction High Court in the case of M/s.Velayudhasamy Spinning Mills (340 ITR 477) when the same is pending appeal before the Hon'ble Supreme Court in SLP Civil 1136/11?

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

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee has the option to choose the first/initial assessment year of claim for deduction under Section 80IA?"

2. Heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the Department.

3. Following the decision of the Supreme Court in Liberty India vs. CIT [2009] 317 ITR 218 and the decision in CIT vs Mewar Oil and General Mills Limited [2004] 271 ITR 311, a Bench of this Court has already held in Velayudhasamy Spinning Mills P.Ltd. vs Assistant Commisisoner of Income Tax [2012] 340 ITR 477 (Mad) that once the losses and other deductions have been set off against the income of the previous year, it should not be re-opened again for the purpose of computation of current year income under Section 80I or 80IA of the Act. Though the decision of this Court in Velayudhasamy Spinning Mills has been taken by the Revenue to the Supreme Court and the Supreme Court has issued notice in the Special Leave Petition, we followed the decision in Velayudhasamy Spinning Mills in CIT vs. R.Yuvaraj reported in [2015] 57 Taxmann.Com 252 (Madras). The effect of the Supreme Court ordering notice in the Special Leave Petition does not tantamount the wiping out the law laid down by this Court, which merely followed the earlier decision of the Supreme Court in Liberty India. Therefore, the questions of law raised are answered against the Revenue and in favour of the assessee.

4. In the result, this Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Joint Commissioner of Income Tax,
   Tirupur Range, Tiruppur.

2. The Commissioner of Income Tax (Appeals-II)
   Coimbatore.

3. The Income Tax Appellate Tribunal,
   Chennai Bench 'B'.

1 CC to Mr.T.R.Senthil Kumar, Advocate SR.No. 46428

Tax Case (Appeal) No.694 of 2015

GP (CO)
PSI (30.09.2015)