IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) No.724 of 2015

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

Vs.

M/s.Indo Shell Cast Pvt. Ltd.,
A-14, SIDCO Industrial Estate,
Kurichi, Coimbatore-641 021.
PAN: AAA CI 4299 N .. Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 07.04.2015 passed in I.T.A.No.457/Mds/2015 (Assessment Year 2010-2011).

For Appellant : M/s.T.R.Senthil Kumar & Hemalatha

JUDGMENT

(Judgment of the Court delivered by V.Ramasubramanian,J)

The Revenue has come up with this appeal, raising the following substantial questions of law:

> "(i) Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that assessee is entitled to deduction under Section 80-IA, without setting-off of the losses/unabsorbed depreciation pertaining to the windmill, which were set-off in the earlier year against the other business income of the assessee, following the decision of this Court in the case of M/s.Velayudhasamy Spinning Mills (2012 (Vol.340) ITR

477), when the same is pending in appeal before the Supreme Court in S.L.P.(Civil).No.1136 of 2011 ?

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

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

2. Following the decision of the Supreme Court reported in 2009 (Vol.317) ITR 218 (SC) (Liberty India Vs. C.I.T) and the decision of the Rajasthan High Court reported in 2004 (Vol.271) ITR 311 { C.I.T. Vs. Mewar Oil and General Mills Limited (No.1) }, this Court already answered the above questions of law against the Revenue, and the same is reported in 2012 (Vol.340) I.T.R 477 (Mad) (Velayudhaswamy Spinning Mills Vs. Assistant C.I.T).

3. However, learned Standing Counsel appearing for the appellant/Revenue contended that the above said decision of this Court reported in 2012 (Vol.340) I.T.R. 477 (Mad) (Velayudhaswamy Spinning Mills case) has already been taken on appeal to the Supreme Court in S.L.P.(Civil).No.1136 of 2011.

4. The fact that the Supreme Court is already seized of the matter,

cannot be a ground to take a different view, unless the Revenue is able to show that the law laid down by this Court reported in 2012 (Vol.340) I.T.R. 477 (Mad) (Velayudhaswamy Spinning Mills case) is contrary to the settled principles of law.

5. In the said decision reported in 2012 (Vol.340) I.T.R. 477 (Mad) (Velayudhaswamy Spinning Mills case), this Court followed the above said decision of the Apex Court reported in 2009 (Vol.317) ITR 218 (SC) (Liberty India case).

6. In fact, the above said decision of this Court reported in 2012 (Vol.340) I.T.R. 477 (Mad) (cited supra) has been recently followed by this Court in the decision reported in 2015 (Vol.57) taxmann.Com 252 (Madras) (Commissioner of Income Tax, Circle-I, Tirupur Vs. R.Yuvaraj).

7. Accordingly, the substantial questions of law raised in this Tax Case (Appeal) are answered against the Revenue and this Tax Case (Appeal) is therefore dismissed. No costs.

(V.R.S.J) (T.M.J)
02.09.2015

Index : Yes / No

Internet: Yes / No
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To

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

2. The Deputy Commissioner of Income Tax,
   Company Circle-I (1), Coimbatore.

3. The Registrar,
   Income Tax Appellate Tribunal, "C".Bench,
   Chennai.

4. The Commissioner of Income Tax (Appeals)-I, Coimbatore.

Tax Case (Appeal).No.724 of 2015

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