IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

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

Tax Case (Appeal) No.735 of 2015

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

-Vs-

M/s.Sulochana Cotton Spinning Mills Private Limited, No.424 and 426, Kamaraj Road,
Tirupur-641 604. ... 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 'A' Bench dated 17.03.2015 passed in ITA No.3025/Mds/2014 against the Order passed by the Commissioner of Income Tax(Appeals) - II, Coimbatore, dated 30.09.2014 in ITA No.125/2013-14 as against the Order of the Deputy Commissioner of Income Tax, Company Circle, Tiruppur dated 21.03.2013, passed in PAN/GIR No.AADCS8189G for the Assessment Year 2010-11.

For Appellant : Mr.T.R.Senthil Kumar

JUDGMENT

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

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

> ''1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that assessee is entitled to deduction under

Section 80 IA 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 decisions 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 of 2011?

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 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

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 80-IA?''

2. Following the decision of the Supreme Court in Liberty India v. CIT reported in (2009) 317 ITR 218 and the decision of the Rajasthan High Court in CIT v. Mewar Oil and General Mills Limited reported in (2004) 271 ITR 311, this Court has already held the very same questions of law against the revenue, in a decision reported in Velayudhaswamy Spinning Mills v. Assistant CIT reported in (2012) 340 ITR 477.

3. However, Mr.T.R.Senthil Kumar, learned Standing Counsel for the Revenue contended that the decision of this Court in Velayudhaswamy Spinning Mills has already taken on appeal to the Supreme Court and that the Supreme Court is already seized of the matter.

4. But the fact that the Supreme Court is 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 in Velayudhaswamy Spinning Mills case was contrary to the settled principles.

5. In Velayudhaswamy Spinning Mills case, this Court merely followed the decision rendered in Liberty India case. Therefore, we have ourselves followed the decision rendered in Velayudhaswamy Spinning Mills in Commissioner of Income Tax, Circle I, Tripur vs.

R.Yuvaraj in (2015) 57 taxmann.com 252 (Madras). Therefore, the questions of law are answered against the Revenue and the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Income Tax Appellate Tribunal,
   Madras Bench 'A'.

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

4. The Deputy Commissioner of Income Tax,
   Company Circle, Tirupur.

5. The Assistant Registrar,
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai - 90.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.46971

Tax Case (Appeal) No.735 of 2015

RJ(CO)
CA(21/09/2015)