IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE MR.JUSTICE **R.KARUPPIAH**

Tax Case (Appeal) No.760 of 2007

M/s.K.S.P.S.Natarajan & Co.
13A/1, Meenakshipuram West
Tuticorin .. Appellant

versus

The Joint Commissioner of Income Tax
Special Range-II, Tuticorin
.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 09.03.2006 made in I..T.A..No.1814/mds/2004 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment year 1998-99.

For appellant : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

For respondent : Mr.M.Swaminathan
Standing Counsel for Income Tax.

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.)**

This Tax Case (Appeal) filed by the assessee as against the order of the Income Tax Appellate Tribunal was admitted by this Court on the following substantial questions of law:

> *"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 80IA of the Act of the profits from the generation of electricity through wind electricity generation for the assessment year 1998-99?*
>
> *2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that in the case of assessee engaged in the generation of electricity requirement of employing ten or more persons under Section 80IA(2(v) would be applicable?*
>
> *3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in not appreciating that the industrial undertaking engaged in power generation u/s. 80IA(2)(ivb) is different from industrial undertaking mentioned in Sec.80IA(20(v)/*
>
> *4. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the losses incurred by the industrial undertaking in the earlier years, which was adjusted against the income of other units in the earlier assessment years, has to be notionally carried forward and set-off against the income of the current assessment year for the purpose of computing deduction under Section 80IA of the Act?"*

2. The appellant/assessee is engaged in the business of generation of electricity among other business. For the assessment year 1998-99, the assessee filed return of income admitting total income of Rs.19,88,324/-. While completing the assessment, the Assessing Officer disallowed the claim of deduction under Section 80IA of Rs.11,44,383/- being the income earned from generation of power through wind mill on the ground that the assessee did not engage ten workers as per Section 80IA((2)(v) and also on the ground that the deduction under Section 80IA should be allowed on the basis that the eligible business is the only source of income.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who dismissed the appeal. Against which, the assessee pursued the matter before the Income Tax Appellate Tribunal.

4. Before the Tribunal, the assessee conceded stating that the issue in the present appeal stands covered against the assessee in the case of Ramakrishna Mills Ltd. in ITA No.84/Mds/98. In view of such submission, the Tribunal had no other option except to follow the said decision. Hence, the Tribunal following its decision dismissed the

appeal. For better clarity, we extract the relevant portion of the order of the Tribunal as such.

> *"5. Before us Shri S.P.Chidambaram, the learned counsel for the assessee appeared. It was fairly conceded that the issue involved in the present appeal stands covered against the assessee by the decision of the D-Bench of this Tribunal in the case of Ramakrishna Mills Ltd in ITA No.84/Mds/98. In view of the above, we dismiss the appeal of the assessee".*

5. Not satisfied with order of the Tribunal, the assessee is before this Court.

6. Heard learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

7. Before us, learned counsel appearing for the assessee submitted that the issue involved in the case of Ramakrishna Mills Ltd. is a totally different one and therefore, the appeal may be entertained on the plea of eligibility of Section 80IA of the Income Tax Act.

8. We are not inclined to accept such a plea in view of the fact that the assessee itself had fairly conceded before the Tribunal that the sole issue raised was covered by the decision of the said Bench. If at all the assessee has any grievance, it is a case for review before the Tribunal and not an appeal before this Court.

9. Accordingly, this Tax Case (Appeal) is dismissed. No costs.

Index: Yes / No (R.S.,J.) (R.K.,J.)
Internet: Yes / No 20.01.2015

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To

1. The Income Tax Appellate Tribunal, Madras 'D' Bench.
2. The Commissioner of Income Tax (Appeals)-VII, Chennai
3. The Deputy Commissioner of Income Tax Circle I (1), Salem.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

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