

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

T.C.A.No.333 of 2016

The Commissioner of Income Tax,
Trichy

.. Appellant

versus

M/s.Prem Textile International
No.32, Ramakrishnapuram,
Karur 639 001.

... Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, B Bench Chennai and made in I.T.A.No.311/Mds/2015, dated 15.05.2015 against the order of the Commissioner of Income Tax (Appeals) Tiruchirappalli dated 27.11.2014 and made in I.T.A.NO.317/2013-14/CIT(A) TRY against the order of the Assistant Commissioner of Income Tax, Circle -II, Range -II, tiruchirapalli dated 26.2.2014 and made in PAN/GIR.No.AAAFP4219L for the assessment year 2011-12.

For Petitioner :Mr.J.Narayanasamy

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Tax Case Appeal, is to an order made by the Income Tax Appellate Tribunal in I.T.A.No.311/Mds/2015, dated 15.05.2015, by which, the Tribunal has dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax, dated 27.11.2014.

2. Short facts leading to the appeal are that the assessee filed the return for the assessment year 2011-12, on 29.09.2011, admitting the total income of Rs.15,19,456/-. The nature of business of the assessee is to export home textiles products and generate power using wind energy. The case was selected for scrutiny under CASS and Notice, under Section 143 (2) of the Income Tax Act, was issued. The Assessment Officer completed the assessment under Section 143(3), making the following deductions,

1.	Addition for low profit	Rs.5,00,000/-
2.	Addition - 80IA	Rs.65,12,277/-

Being aggrieved by the same, the assessee challenged the order of assessment, before the Commissioner of Income-Tax, contending inter alia,

(a) The Assistant Commissioner of Income-Tax has failed to understand the provisions of Section 80-IA(5) had been interpreted and decided by the jurisdictional Court and based on the said ratio the appellant had claimed the deduction.

(b) The deduction claimed by the appellant is as per the decision of the Madras High Court in M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477.

3. Before the appellate authority, the assessee contended that he had total turnover of Rs.74,26,272/-, through sale of power generated out of windmill and admitted Rs.65,12,277/- as income from windmill business and claimed deduction under Section 80-IA. Placing reliance on a decision in M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477, the Commissioner of Income-Tax, Tiruchirapalli, directed to Assessing Officer to allow deduction claimed by the assessee, under Section 80-IA, to the tune of Rs.65,12,277/- and observed that if the Hon'ble Apex Court reverses the decision given by this Court in Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra), the Assessing Officer may accordingly take suitable remedial action.

4. Being aggrieved by the same, the the Assistant Commissioner of Income-Tax, Trichy, filed an appeal before the Income-Tax Appellate Tribunal, "B" Bench, Chennai. After hearing the learned counsel appearing for the department and by observing that the decision of this Court in Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra), is squarely applicable to the facts of the case, the Tribunal dismissed the appeal filed by the revenue.

5. Mr.J.Narayanasamy, learned counsel appearing for the revenue assailed the correctness of the order of the Income-Tax Appellate Tribunal, "B" Bench, Chennai, dated 15.05.2015, on the grounds that the Tribunal has erred in holding that the assessee is entitled for the claim of deduction, under Section 80-IA, with respect to the wind mill unit and further contended that the Tribunal ought to have appreciated that profit and gains of such business, right from the beginning, had to be computed separately and after reducing the past losses, unabsorbed

depreciation and unabsorbed investment allowance, deduction under Section 80-IB can be allowed on the balance amount and therefore, raised a substantial question of law, as to whether, the Tribunal was right in holding that the assessee is entitled for deduction under Section 80IA, with respect of the windmill division, by following the decision of this Court in Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra).

6. Chapter VIA of the Income-Tax Act, 1961, deals with deductions to be made in computing the total income. As per Section 80-A(1), in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VIA, the deductions specified in Section 80-C and 80U. Section 80-IA deals with deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. Section 80-IA(1) reads hereunder:

"(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years."

7. In Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra), the assessee therein was engaged in the business of manufacture of IMFL products, generation of power through wind and biomass and also trading in iron ore and coal. The return of income for the assessment year 2004-05 was filed on 1st Nov., 2004 admitting a total income of Rs.9,54,41,024. The said return of income was processed under Section 143(1) on 19th Feb., 2005. Subsequently, this case was selected for scrutiny and notice was issued under Section 143(2) on 21st Oct., 2005. While computing the assessment, the Assessing Officer disallowed the claim of deduction made by the assessee under Section 80-IA amounting to Rs.10,63,74,164/-, on the ground that the eligible deduction under Section 80-IA after setting off, of the loss, which works out to 'nil'.

8. Aggrieved by the said order, appeal was filed by the assessee therein before the CIT(A) and that the same was dismissed. Against the said order, the assessee therein filed an appeal before the Tribunal. The said appeal was allowed by the Tribunal on a finding that there is no question of setting off

notionally carried forward unabsorbed depreciation or loss against the profits of the units and the assessee therein was entitled to claim deduction under Section 80-IA on current assessment year on the current year's profit and thereby, set aside the order of the authority. Aggrieved by the said order, the Revenue filed the appeal by raising a substantial questions of law, as to (1) whether, on the facts and circumstances of the case, the Tribunal was right in not admitting a letter from the Assessing Officer showing that assessee had exercised the option of claiming the deduction under s. 80-IA during the assessment year 1999-2000 which is the first/initial assessment year for the purpose of deduction under Section 80-IA, as additional evidence and holding that the assessment year 2004-05 is first/initial assessment year in which the assessee had claimed the deduction under s. 80-IA? (2) Whether in the facts and circumstances of the case, the Tribunal was right in holding that carried forward loss and unabsorbed depreciation cannot be set off against the profits of the units and therefore the assessee is entitled for deduction under Section 80-IA r/w Section 80AB? and Whether in the facts and 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 s. 80-IA ?"

9. On the facts and circumstances of the case, while advertng to the substantial questions of law and after considering the judgment of the Apex Court in Liberty India vs. CIT (2009) 225 CTR (SC) 233 : (2009) 28 DTR (SC) 73 : (2009) 317 ITR 218 (SC) and the judgment of the Rajasthan High Court in CIT vs. Mewar Oil & General Mills Ltd. (2004) 186 CTR (Raj) 141 : (2004) 271 ITR 311 (Raj), a Hon'ble Division Bench of this Court in Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra), held that once the losses and other decisions have been set off against the income of the previous year, it should not be re-opened again for the purpose of computation of the current year income under Section 80-I and 80-IA of the Act.

10. Velayudhaswamy Spinning Mills Pvt. Ltd., 's case (stated supra), has been followed in CIT v. R.Yuvaraj reported in [2015] 57 TAXMANN.COM 252 (Madras).

11. Though it is contended that SLP filed against the above reported judgment, is pending on the file of the Hon'ble Supreme Court, the effect of the same, would not amount to reversal or erase the dictum.

12. Material on record discloses that while confirming the order of the Commissioner of Income-Tax (Appeal), the Income-Tax Appellate Tribunal has rightly held that, "on appeal, the Commissioner of Income-tax (Appeals), following the aforesaid judgment of the Madras High Court in the case of Velayudhaswamy

Spinning Mills Pvt. Ltd. (supra), allowed the claim of the assessee and concurred that, in case the Apex Court reverses the decision given by the Madras High Court in the above case of Velayudhaswamy Spinning Mills Pvt. Ltd. (supra), and supports contention of the Department in future, the Assessing Officer may accordingly take suitable remedial action." The above view expressed by the appellate authority has been confirmed by the Income-Tax Appellate Tribunal, Chennai.

13. There are no valid grounds to reverse the abovesaid orders, stated supra. Question of law raised is answered against the revenue and in favour of the assessee.

14. In the result, the Tax Case Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

skm

To

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

2. The Commissioner of Income Tax
Trichy

3. The Commissioner of Income Tax (Appeals)
Trichy

4. The Assistant Commissioner of Income Tax
Circle II,. Trichy

1 cc to M/s.J. Narayanasamy, Advocate, Sr. 29387

T.C.A.No.333 of 2016

ALA (CO)
kk 29/6