IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.2.2016

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice N.KIRUBAKARAN

T.C.A.No.41 of 2016

Commissioner of Income Tax II,
Chennai-34. ...Appellant

Vs

M/s.Global Calcium Ltd., Hosur. ...Respondent

APPEAL under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 29.5.2015 passed in I.T.A.No.81/Mds/2015 against the order of Commissioner of Income Tax (Appeals)-II, Chennai-34, dt. 5.09.2014 made in ITA No.600/2013-14 for the Assessment Year 2010-11, against the order of Deputy Commissioner of Income Tax Company Circule II (2), Chennai-34 dt. 4.3.2013 made in PAN/GIR NO.AAACGZ998N for the Assessment year 2010-11.

For Appellant : Mr.T.R.Senthilkumar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

The following questions of law are framed for consideration :

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in remitting the issue back to the Assessing Officer with instruction that disallowance cannot exceed the exempt income earned by the assessee during the year when the statute prescribes for the disallowance under Section 14A is in accordance with Rule 8D of the Income Tax Rules with effect from assessment year 2008-09 onwards ?

(ii) Whether in the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the 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.Velayudhaswamy

Spinning Mills [340 ITR 477], when the same is pending appeal before the Honourable Supreme Court ?

(iii) 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 ? and

(iv) Whether under 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 Section 80IA?

2. Heard the learned counsel for the appellant.

3. Out of the above questions, questions of law 2 to 4 are already covered by the decision of this Court in Velayudhaswamy Spinning Mills Vs Asst. CIT [(2012) 340 ITR 477], which was followed by this Court in C.I.T. Vs. R.Yuvaraj [(2015) 57 Taxmann.Com 252 (Madras)].

4. In so far as the first question of law is concerned, the total dividend income, which was sought to be included is Rs.4,74,257/-. Therefore, if the first question of law alone is to survive, the total income, in respect of which, the above appeal would arise, would only be less than the ceiling limit prescribed by the circular of the Central Board of Direct Taxes. Therefore, we do not propose to entertain the appeal on this question.

5. Though Mr.T.R.Senthilkumar, learned Standing Counsel for the Department contended that for the purpose of application of the circular of the Central Board of Direct Taxes, the total value that would arise out of all the questions of law has to be taken into account, we do not think that the said proposition can be accepted. If a few out of several questions of law are covered by the decisions of this Court or of the Supreme Court, they automatically get excluded. Hence, we do not propose to entertain this appeal. Moreover, the Tribunal has sent the matter back to the Assessing Officer. Therefore, the Department cannot be said to be aggrieved by the order of the Tribunal.

6. Accordingly, the tax case appeal is dismissed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Income Tax Appellate Tribunal 'B' Bench, Chennai
2. The Commissioner of Income Tax-II, Chennai-34.

3. The Commissioner of Income Tax (Appeals-II),Chennai-34.

4. The Deputy Commissioner of Income Tax, Company Circle-II(2), Chennai-34.

5. The Assistant Registrar, Income Tax Appellate Tribunal, IIIrd Floor Rajaji Bhavan, Besant Nagar, Chennai-90.

+ 1 cc to Mr.T.R. Senthil Kumar, Advocate Sr.6423

TCA.No.41 of 2016

SKV(CO)
Eu 12.02.16