

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.06.2016

C O R A M

The Honourable Mr. Justice S. MANIKUMAR
and
The Honourable Mr. Justice D. KRISHNAKUMAR

Tax Case Appeal No. 438 of 2016

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

Vs

M/s. Gajananda Jewellery Pvt. Ltd.,
No. 133, New Market Street,
Tirupur - 641 604. ... Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai dated 19.12.2014 in ITA No. 2317/Mds/2011 (Assessment Year 2010-11) against the order of the Commissioner of Income Tax (Appeals)-II, Coimbatore, order dt. 30.06/2014 in IT. Appeal NO. 98/13-14 against the order of the Deputy Commissioner of Income Tax Company Circle, Tirupur, order dt. 30.03.2013 in PA. NO./G.I.R NO. AACCG5631L for the assessment year 2010-2011.

For appellant : Mr. T. R. Senthil Kumar
Sr. Standing Counsel for Income Tax.

For respondent : No appearance

J U D G M E N T

(Judgment of the Court was made by S. Manikumar, J)

Challenge in this Tax Appeal, is to an order passed by the Income Tax Appellate Tribunal in ITA No. 2317/Mds/2011, dated 19.12.2014, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals)-II, Coimbatore dated 30.06.2014 for the Assessment Year 2010-11.

2. Revenue has come up with the above appeal, raising the following substantial questions of law:-

"1. Whether under the facts and circumstance of the case, the Hon'ble Income Tax Appellate Tribunal right in law 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 decision of the jurisdiction High Court in the case of M/s.Velayudhasamy Spinning Mills (340 ITR 477) when the same is pending appeal before Hon'ble Supreme Court in SLP Civil No.1136/2011?

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?

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?"

3. When the matter came up for admission, in the light of the Board Circular No.1/2016, dated 15/2/2016, Mr.T.R.Senthil Kumar, learned counsel for the revenue, submitted that the substantial questions of law Nos.2 and 3 are not pressed. His submission is placed on record.

4. As regards substantial question of law No.1 is concerned, it is the fair representation of the learned Senior Standing Counsel for Income Tax Department that this Court has been consistently following the decision in M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477. He also submitted that challenge to the same, is pending before the Hon'ble Apex Court in SLP No.1136 of 2011.

5. Central Board of Direct Taxes has issued Circular No.1/2016, dated 15/2/2016 and the same reads as follows:-

"Circular No. 1 /2016

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi, the 15th February, 2016

Subject: Clarification of the term 'initial assessment year' in Section 80IA(5) of the Income Tax Act, 1961

Section 801A of the Income-tax Act, 1961 ('Act'), as substituted by Finance Act, 1999 with effect from 1.4.2000, provides for deduction of an amount equal to 100% of the profits and gains derived by an undertaking or enterprise from an eligible business (as referred to in Sub-Section (4) of that Section) in accordance with the prescribed provisions. Sub-Section (2) of Section 801A further provides that the aforesaid deduction can be claimed by the assessee, at his option, for any ten consecutive assessment years out of fifteen years (twenty years in certain cases) beginning from the year in which the undertaking commences operation, begins development or starts providing services etc. as stipulated therein. Sub-Section (5) of Section 801A further provides as under :

"Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of Sub-Section (1) apply shall, for the purposes of determining the quantum of deduction under that Sub-Section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made".

In the above Sub-Section, which prescribes the manner of determining the quantum of deduction, a reference has been made to the term 'initial assessment year'. It has been represented that some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/manufacturing activity had commenced and are considering such first year of commencement/operation etc. itself as the first year for granting deduction, ignoring the clear mandate provided under Sub-Section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The matter has been examined by the Board. It is abundantly clear from Sub-Section (2) that an assessee who is eligible to claim deduction u/s 80IA has the option to choose the initial/first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that Sub-Section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 80IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term 'initial assessment year' would mean the first year opted for by the assessee for claiming deduction u/s 80IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers are, therefore, directed to allow deduction u/s 80IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allowability of deduction u/s 80 IA shall also not be pursued to the extent it relates to interpreting 'initial assessment year' as mentioned in Sub-Section (5) of that section for which the Standing Counsel/DRs be suitably instructed.

The above be brought to the notice of all Assessing Officers concerned."

6. Similar to the facts and circumstances of the case, while advertent to the substantial questions of law raised and after considering the judgment of the Hon'ble Apex Court in Liberty India vs. CIT reported in (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. reported in (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 deductions are set off against the income

of the assessee in the previous year, it should not be re-opened again, for the purpose of computation of current year income, under Section 80-I and 80-IA of the Act.

7. 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), wherein, it is held that 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.

8. 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, "... we find that the issue in appeal has already been considered and decided in favour of the assessee by the Hon'ble Jurisdictional High Court in the case of M/s.Velayudhaswamy Spinning Mills (P) Ltd. v. ACIT (supra). We find no merit in the appeal of the revenue."

9. Going through the material on record, we are of the view that there are no valid grounds to reverse the abovesaid orders. Question of law No.1 raised is answered against the revenue and in favour of the assessee. Since the questions of law Nos.2 and 3 are also covered by the Circular extracted, the instant appeal deserves to be dismissed and accordingly, dismissed, holding substantial questions of law in favour of the assessee.

10. In the result, the Tax Case Appeal is dismissed at the stage of admission itself. No costs.

Sd/-
Assistant Registrar(V)

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सत्यमेव जयते
Sub Assistant Registrar

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1. The Income Tax Appellate Tribunal, 'C' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-II, Coimbatore.
3. The Deputy Commissioner of Income Tax, Company Circle, Tirupur.

+ 1 cc to Mr.T.R. Senthilkumar, Advocate SR.36656

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