IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2016

C O R A M

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

Tax Case Appeal No.446 of 2016

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

Vs

M/s.Arun Kumar Spinning Mills Ltd.,
184-A, Hotel Sriganesh,
Chinasamy Naidu Road,
Coimbatore - 641 044 ...Respondent/Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 11.12.2015 in ITA No.1893/Mds/2015 (Assessment Year 2012-13) against the order of the Commissioner of Income Tax (Appeals-I, Coimbatore, made in appeal NO.345/14-15, dt. 15.06.2015 and against the order of the Deputy Commissioner of Income Tax, Corporate Circle-2, Coimbatore made in PAN.NO.AAECA.8747P, dated 24.02.2015.

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

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.1893/Mds/2015, dated 11.12.2015, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) dated 15.06.2015 for the Assessment Year 2012-13.

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

"1. Whether on the facts and circumstance of the case the Appellate Tribunal was right in law in holding that the assessee is entitled to deduction under section 80 IA of the Income Tax Act?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that unabsorbed depreciation of the earlier years before the first year or claim, which was already been absorbed, should not be notionally carried forward and taken into consideration for computation of deduction u/s.80 IA of the Income Tax Act?”

3. As regards substantial questions of law, are 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.

4. Similar to the facts and circumstances of the case, while adverting 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.

5. 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.

6. Material on record discloses that while confirming the order of the Commissioner of Income-Tax (Appeal), the Income-Tax Appellate Tribunal, at paragraph No.6 has held as follows:

> "6. We have heard both the parties and carefully perused the materials available on record. From the facts of the case it appears that the Ld.Assessing Officer was of the view that since the Revenue was on appeal against the decision of the Hon'ble Madras High Court in the case Velayudhaswamy Spinning Mills P.Ltd (supra) before the Hon'ble Apex Court, he need not follow that decision. He did not realise that mere filing of the SLP before the Apex Court is not a

valid ground for not following the judgment of the Hon'ble Madras High Court. Further, it is not the case of the Revenue that the judgment of the Hon'ble Madras High court in the case Velayudhaswamy Spinning Mills P. Ltd (supra) is stayed by the Hon'ble Apex Court. It is pertinent to mention that in the absence of any stay granted by the Hon'ble Apex Court against the operation of the judgment of the Hon'ble Madras High Court, all the lower judiciaries as well as quasi judicial authorities are bound to follow the decision of the Hon'ble Jurisdictional High Court. Since the Ld.CIT(A) has rightly followed the decision of the jurisdictional High Court cited supra and held the issues in favour of the assessee, we do not find it necessary to interfere with the orders of the Ld.CIT(A). Therefore, we hereby confirm the orders of the Ld.CIT(A)."

7. Going through the material on record, we are of the view that there are no valid grounds to reverse the abovesaid orders. Questions of law raised are answered against the revenue and in favour of the assessee and the instant appeal deserves to be dismissed.

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

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ars
To
1. The Income Tax Appellate Tribunal,
   Madras 'B'Bench, Madras.

2. The Commissioner of Income Tax (Appeals)I, Coimbatore.

3. The Deputy Commissioner of Income Tax,
   Corporate, Circle-2, Coimbatore.

+ 1 cc tdo Mr.T.R.Senthilkumar, Advocate SR.38248

Tax Case Appeal No.446 of 2016

SCD(CO)
EU 16.08.16