IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Tax Case Appeal No.457 of 2016

The Commissioner of Income Tax
Trichy ... Appellant/Appellant

Vs

M/s.R.K.Textiles
292 Mahathma Gandhi Road
Karur 639 002. ... Respondent/Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 30.04.2015 made in ITA No.624/Mds/2015, against the order of the O/o the Commissioner of Income Tax (Appeals) - I, Tiruchirapalli, made in ITA No.165/ 2012-13/CIT (A)/TRY, dated 10.12.2014 against the order of the O/o the Assistant Commissioner of Income Tax Circle II, Range II, Tiruchirappalli made in PAN No.AAAFR6620H.

For Appellant : Mr.S.Rajesh

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 I.T.A.No.624/Mds/2015, dated 30/4/2015, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) I, Tiruchirapalli, dated 10/12/2014.

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

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that assessee is entitled for deduction under Section 80 IA with respect to the windmill division by following the decision of the Madras High Court in the case of Velayuthaswamy Spinning Mills?"

3. 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, as regards the substantial question of law raised in the instant appeal. He also submitted that challenge to the same, is pending before the Hon'ble Apex Court in SLP No.334 of 2012.

4. Similar to the facts and circumstances of the case, while adverting to the substantial question of law raised and after considering the judgment of the Hon'ble 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 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 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 Hon'ble Apex Court reverses the decision given by the Madras High Court, in the 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.

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

8. In the result, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs

To

1.The Income Tax Appellate Tribunal,
Madras 'C' Bench, Chennai.

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

3.The Assistant Commissioner of Income Tax,
Circle II, Range II,
Tiruchirapalli.

+2cc's to Mr.S.Rajesh, Advocate, S.R.No.40921

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VGI(CO)
CA(24/08/2016)