IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/8/2016

C O R A M

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

Tax Case Appeal No.527 of 2016

Commissioner of Income Tax
Chennai ... Appellant

Vs

M/s. Chettinad Morimura SemiConductor
Material Pvt Ltd
37 Old Mahabalipuram Road
Kazhipattur Village
Padur Post
Kanchipuram District 603 103. ... Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 19/2/2014 in ITA No.2082/Mds/2013 (Assessment Year 2008-09).

For appellant : Mr.T.R.Ravikumar
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.2082/Mds/2013, dated

19/2/2014, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) dated 19/2/2014 for the Assessment Year 2008-09.

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

> "Whether in the facts and circumstances of the case, the Tribunal was right in law in holding that the notional loss of depreciation which was set off against other income of earlier years prior to initial assessment year could not be carried forward to set off in the initial assessment year for the purpose of working out the deduction under Section 80 IA of the Act, when the same is permitted under Section 80 IA (5) of the Act?"

3. As regards substantial questions of law, are concerned, it is the representation of the learned Senior Standing Counsel for Income Tax Department that the decision in **M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477** is under challenge and 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, has held in paragraph 4.2 that

> ".... In the light of the decision rendered in **M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477**, there is merit in the appellant's contention that the losses of earlier years prior to the initial assessment year which have already been set off cannot be notionally brought forward and set off once again against the profit of the eligible business in determining the quantum of deduction under Section 80 IA. Respectfully following the Hon'ble Madras High Court's decision, this issue is decided in favour of the appellant. Accordingly, the AO is directed to re-work the deduction under Section 80 IA without setting off of losses on notional basis. This ground is allowed."

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.

(S.M.K.,J) (D.K.K.,J)
16th August 2016

mvs.

Index: Yes/No

website: Yes/No

To

1. The Commissioner of Income Tax
Chennai.

2. The Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai

S.MANIKUMAR,J

a n d

D.KRISHNAKUMAR,J

mvs.

Tax Case Appeal No.527 of 2016

16/8/2016