IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 5/8/2016

C O R A M

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

Tax Case Appeal No.533 of 2016

The Principal Commissioner of Income Tax 3
No.63 Race Course Road
Coimbatore ... Appellant

Vs

M/s.Eastman Shipping Mills P. Ltd
10, 12 2nd Street
Kumar Nagar South
Tirupur 641 603. ... Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 8/12/2015 in ITA No.1966/Mds/2015, preferred against the Order of the Commissioner of Income Tax (Appeals) - 3, Coimbatore, order dated 29.06.2015 made in ITA.No.58/2014-15 and against the Order of the Deputy Commissioner of Income Tax, Company Circle, Tirupur, order dated 31.03.2014, made in PAN/GIR No.AAACE4595R for the Assessment Year 2011 - 12.

For appellant : Mr.T.R.Senthil Kumar
Senior 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 I.T.A.No.1966/Mds/2015, dated 8/12/2015, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) I, Coimbatore.

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

> "1. Whether on 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 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 under Section 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 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, at paragraph No.5 has held as follows:-

> "5. After hearing both the parties, in our opinion, this issue is covered by this Tribunal in favour of the assessee in the case of M/s.Ambika Cotton Mills Ltd. & Others in ITA Nos.1958 & 1959/Mds/2015 etc. dated 8.12.2015, wherein the Tribunal observed as under:
>
> "2. We have heard both the sides and perused the material on record. The only issue arises for consideration is with regard to deduction claimed by the assessee under Section 80-IA of the Income Tax Act, 1961 (in short "the Act") in respect of windmills. The Assessing Officer rejected the claim of the assessees on the ground that the Department has filed a Special Leave Petition against the judgment of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd vs. ACIT 231 CTR 368. However, the Commissioner of Income Tax (Appeals) by following the judgment of Madras High Court allowed the claim of the assessees.
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> 3. Now the only contention of the Department before this Tribunal is that the Revenue has not accepted the judgment of Madras High Court and an appeal has already been filed along with Special Leave Petition and the same is pending before the Apex Court. This Tribunal is of the considered opinion that mere pendency of Special Leave Petition before the Apex Court cannot be a reason to take a different view. The judgment of Madras High Court is binding on all the authorities in the State of Tamil Nadu and Union Territory of Pondicherry. Therefore, the Commissioner of Income Tax (Appeals) has rightly allowed the claim of the assessees by following the binding judgment of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd (supra). Therefore, this Tribunal do not find any infirmity in the order of the Commissioner of Income Tax (Appeals)."

In view of the above, we do not find any infirmity in the order of the CIT (Appeals) and the same is confirmed."

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. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs

To

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

2.The Commissioner of Income Tax(Appeals) - 3,
Coimbatore.

3.The Deputy Commissioner of Income Tax,
Company Circle, Tiruppur.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.44965

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NRJK(CO)
CA(02/09/2016)