IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/8/2016

C O R A M

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

Tax Case Appeal No.573 of 2016

Commissioner of Income Tax
63 Race Course Road
Coimbatore. ... Appellant/Appellant

Vs

M/s. G.V.G.Industries Pvt Ltd
No.54/2 Jothi Nagar
Udumalpet 642 128. ... Respondent/Respondent
(PAN AAA CG 1205 E)

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai dated 19/6/2014 in ITA No.97/Mds/2014 (Assessment Year 2010-11).

Against the order dt.30.10.13 made in I.T.Appeal No.129/12-13 on the file of the O/o.Commissioner of Income Tax (Appeals) II, Coimbatore against the order of the Deputy Commissioner of Income Tax salary Circle I, Coimbatore made in PAN No.AAACG1205E for the Assessment year 2010-11.

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

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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.97/Mds/2014, dated 19/6/2014, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) dated 30/10/2013 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 the Hon'ble Supreme Court in SLP Civil 1136/11?

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. 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 , at paragraph No.3 has held as follows:

"3. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. We find that the issue in appeal is squarely covered by the decision of the jurisdictional High Court in the case of Sri Velayudhasamy Spinning Mills Pvt Ltd (supra). There is no merit in the appeal of the Revenue, the same is dismissed."

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/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To
1.The Income Tax Appellate Tribunal,
C Bench, Chennai.

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

3.The Deputy Commissioner of Income Tax,
Salary circle-I, Coimbatore.

+1 cc to Mr.T.R.Senthilkumar, advocate,sr.47851.

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