IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2016

C O R A M

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

Tax Case Appeal No.609 of 2016
and
CMP. No.12405 of 2016

Principal Commissioner of Income Tax 1
No.63, Race Course Road,
Coimbatore. ..Appellant/Appellant

Vs

M/s. Brindavan Cotton Mills Pvt. Ltd.,
No.119-C, Selvapuram Colony,
Somanur,
Coimbatore - 641 668.
(PAN AAB CB8937C) ..Respondent/Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 06.01.2016 in ITA No.1909/Mds/2015 preferred against the order of the Commissioner of Income Tax Appeals-I, Coimbatore, dated 8.6.2015 made in Appeal No.333/14-15 for the Assessment years 20.12.2013 and preferred against the Assessment order of the Deputy Commissioner of Income Tax Corporation Circle-I, Coimbatore dated 17.2.2015 made in PAN.NO.AACB 8937D for the Assessment year 2012-13.

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.1909/Mds/2015, dated 06.01.2016, by which, the Tribunal dismissed the appeal preferred by the Revenue, against the order of the Commissioner of Income-Tax (Appeals) -1, dated 08.06.2015 for the Assessment Year 2012-13.

2. Revenue has come up with the instant Tax Case Appeal,

raising the following substantial questions of law:-

> "1. Whether on the facts and 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 has 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 raised, 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 Sections 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 has been held that though it was 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 (Appeals), the Income Tax Appellate Tribunal, at paragraph No.4 has held as follows:

> "........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). "

7. Going through the material on record, we are of the view that there are no valid grounds to reverse the aforesaid 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, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(V)

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Sub Assistant Registrar

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To

1. The Assistant Registrar, Income Tax Appellate Tribunal, Madras - C Bench, Madras.

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

3. The Deputy Commissioner of Income Tax Corporation Circle-I, Coimbatore.

4. The Principal Commissioner of Income Tax -I, Combatore.

+ 1 cc to Mr.T.R. Sentilkumar, Advocate Sr.48965



MSM(CO)
EU 29.09.16