IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30/8/2016

C O R A M

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

Tax Case Appeal No.611 of 2016

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

Vs

Shri.P.K.Ganeshwar. ... Respondent/Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 29/1/2016 in ITA No.1717/Mds/2015 (Assessment Year 2009-10), as against the Order passed by the Commissioner of Income Tax(Appeals) - 3, Coimbatore, dated 29.05.2016 in ITA No.34/2014-15 for the Assessment Year 2009-2010 as against the Order passed by the Deputy Commissioner of Income Tax Circle - I, Tirupur dated 21.02.2014 in PAN/GIR.No.ADFPG6476N for the Assessment year 2009 -2010 as against the Order passed by the Assistant Commissioner of Income Tax, Circle I, Tirupur,dated 22.11.2011 in PAN/GIR.No. ADFP46476N, for the Assessment year 2009 - 2010.

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

For respondent : No appearance.

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.1717/Mds/2015, dated 29/1/2016, by which, the Tribunal dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax (Appeals) - 3, Coimbatore, dated 29/5/2015 for the Assessment Year 2009-10.

2. Revenue has come up with the above 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 the 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 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 Deputy Commissioner of Income-Tax, Circle 2,

Tirupur, the Income-Tax Appellate Tribunal, at paragraph No.5 has held as follows:

> "5. The CIT (A), by following the judgment of the Madras High Court in the case of Velayudhaswamy Spinning Mills P. Ltd (supra), allowed the claim of the assessee under Section 80 IA of the Act. The only contention of the ld. DR is that to keep the matter alive, the Assessing Officer disallowed the claim of the assessee. This Tribunal is of the considered opinion that the judgment of the Madras High Court is binding on all authorities including this Tribunal. Therefore, the CIT (A) has rightly followed the judgment of the Madras High Court in the case of Velayudhaswamy Spinning Mills P. Ltd (supra) and allowed the claim of the assessee. This Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly, 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.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs

To

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

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

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

4. The Deputy Commissioner of Income Tax,
   Circle I, Tirupur.

5. The Assistant Commissioner of Income Tax,
   Circle I, Tirupur.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.79111

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PUR(CO)
CA(04/10/2016)