IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE DR.JUSTICE P.DEVADASS

T.C.A.No.662 of 2016

Principal Commissioner of Income Tax, Central-I,
No.108, Mahatma Gandhi Road,
Chennai. ...Appellant

Vs.

M/s.GRT Hotels & Resorts Pvt. Ltd.,
136, Usman Road,
T.Nagar, Chennai-600 017,
PAN: AAA CG 3608 B ...Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order, dated 07.01.2016 in I.T.A.No.2030/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai-B-Bench, Chennai, arising against the order of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 27.07.2015 and pertains to assessment year 2010-2011, against the assessment order dated 28.03.2013 passed by the Deputy Commissioner of Income Tax, Central Circle III (3) Chennai.

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

For respondent : Mr.M.P.Senthil Kumar

सत्यमेव जयते

JUDGMENT

(The Judgment of the Court was delivered by Nooty.Ramamohana Rao,J)

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This appeal by the Revenue is preferred under Section 260-A of the Income Tax Act, by raising the following substantial questions of law:

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(i) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law to hold that the assessee is entitled for deduction under Section 80-IA of the Income Tax Act ? and

(ii) Whether, for the purpose of computing deduction under Section 80-IA(5) of the Act, the lossess of the year prior to the initial year, which had already been absorbed, cannot be brought back notionally and adjusted against the income of the initial and subsequent assessment years?

2. The respondent-assessee is engaged in the business of running hotels and resorts. It has installed a Wind Mill Generator in the previous financial years relevant to the assessment year 2004-2005 and started carrying on the operations thereof. The amount of depreciation for the assessment year 2004-2005, 2005-2006 and 2006-2007 exceeded the profit from the wind mill business and resulted in loss in respect of this eligible business. During the assessment year 2007-2008, the assessee claimed deduction under Section 80-IA(2) of the Act by adopting the same as initial assessment year. For the assessment year 2010-2011, with which we are concerned in this appeal, the assessee claimed an amount of deduction in a sum of Rs.70,54,445/- and this deduction claimed under Section 80-IA, was disallowed by the assessing officer. When the assessee has preferred an appeal, the Commissioner of Income Tax (Appeals), by order dated 27.07.2015, allowed the claim and thereby, allowed the appeal as well. It is against this order passed by the Commissioner of Income Tax (Appeals), the Revenue carried the matter in appeal before the Income Tax Appellate Tribunal, which was dismissed, against which, the present appeal is filed before this Court.

3. The Commissioner of Income Tax (Appeals) allowed the claim of the assessee under Section 80-IA of the Act, by duly following the judgment of this Court, rendered in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, reported in 2012 (21) Taxmann.com 95 (Madras) = 2012 (340) ITR 0477 = 2010 (231) CTR 0368. The objection raised by the Revenue was that when an appeal was preferred before the Supreme Court against the said Velayudhaswamy Spinning Mills (P) Ltd. case and when the same was pending, the judgment of this Court in the said

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Velayudhaswamy Spinning Mills (P) Ltd. ought not to have been followed by the Tribunal.

4. It is only appropriate to note that the Supreme Court, by judgment dated 05.09.2016, dismissed a batch of Special Leave Petitions filed before it, amongst which, S.L.P.(C).No.33475 of 2012, etc., (Assistant Commissioner of Income Tax, Tirupur Vs. M/s.Velayudhaswamy Spinning Mills P.Ltd), which was directed against the judgment of this Court rendered in the above said Velayudhaswamy Spinning Mills P.Ltd. (2012 (340) ITR 0477 (cited supra)) was also included, which has been considered by the Supreme Court and the said SLP was dismissed by the Supreme Court, as it has found no warrant to interfere with the said judgment of this Court, no doubt, without assigning any reasons therefor.

5. In paragraph 14 of the judgment rendered in the said Velayudhaswamy Spinning Mills P.Ltd. case, this Court has subscribed to the view of the Rajasthan High Court rendered in the case of CIT Vs. Mewar Oil and General Mills Ltd., reported in 2004 (186) CTR (Raj) 141 = 2004 (271) ITR 311 (Raj), and came to the conclusion that it is not at all required that the losses which have already been set-off against the income of the previous year, should be revoked again for computation of current income under Section 80-IA for the purpose of computing the admissible deductions thereunder. Hence, this Court came to the conclusion that the order passed by the Tribunal deserves to be confirmed by answering the question framed before it in favour of the assessee and against the Revenue.

6. In the instant case, the Tribunal has followed the ratio laid down by this Court in the said Velayudhaswamy Spinning Mills P.Ltd. case , which judgment of this Court, has since attained finality now by the dismissal of the SLP before the Supreme Court on 05.09.2016. For the purpose of consistency and also the judicial discipline, it requires us to follow the earlier judgment of this Court rendered in the said Velayudhaswamy Spinning Mills P.Ltd. case, particularly when no serious legal infirmity has been shown, for the reason that weighed with this Court in the said Velayudhaswamy Spinning Mills P.Ltd. case, for reaching the conclusions to which it did.

7. Hence, we are of the opinion that the judgment rendered by this Court in the said Velayudhaswamy Spinning Mills P.Ltd case, answers the questions correctly in favour of the assessee

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in this case and against the Revenue and the Tribunal, in the instant case, has not erred in following the ratio laid down by this Court in the said case. Accordingly, this appeal fails and the same is dismissed at the admission stage itself, however, without costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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1. Principal Commissioner of Income Tax, Central-I,
   No.108, Mahatma Gandhi Road,
   Chennai.

2. The Deputy Commissioner of Income Tax
   Central Circle-III (3),
   New Building, 3rd Floor,
   46/108, Mahatma Gandhi Road, Chennai-600 034.

2. The Commissioner of Income Tax (Appeals)-19,
   46/108, 3rd Floor, Mahatma Gandhi Road, Chennai-600 034.

3. The Registrar,
   Income Tax Appellate Tribunal, "B" Bench,
   Chennai.

+1CC to M/s. T.R. Senthilkumar, Advocate, SR 55484

+1CC to M/s. Philip George, Advocate, SR 55606

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