THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

I.T.T.A. No.78 of 2001

JUDGMENT: *(Per Hon'ble Sri Justice Sanjay Kumar)*

This appeal by the Revenue arises out of the order dated 29.09.2000 passed by the Income Tax Appellate Tribunal, Hyderabad 'B' Bench, in I.T.A.No.305/Hyd/1999 relating to the Assessment Year 1995-96.

The questions of law on the basis of which this appeal was admitted were as under:

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the assessee is entitled to claim depreciation @ 100% on the centering material, individual usage of which is very very remote?
>
> 2. Whether on the facts and in the circumstances of the case, the order of the ITAT suffers from perversity by reason of there being no material placed before the Appellate Tribunal to hold that each of the shuttering plate was used independently and individually by the assessee on the basis of functional test?"

It is now stated by Ms. K. Mamatha, learned Senior Standing Counsel for the Revenue, that this issue is no longer open to debate in the light of the Full Bench judgment of this Court in *Commissioner of Income-Tax, Visakhapatnam v. S. Vijaya Kumar*[1].

The majority opinion in the said judgment was to the effect that in the case of centering/shuttering, erected temporarily, even if it is assessed

[1] 2015 (5) ALD 540 (FB)

at a cost of less than Rs.5000/-, in a given case, the Contractor may be able to claim 100% depreciation but cannot claim that every single unit/article/component used for shuttering is costing less than Rs.5000/- and is, therefore, entitled to claim 100% depreciation.

In that view of the matter, the finding of the Tribunal is contrary and warrants interference.

The appeal is accordingly allowed in terms of the aforestated Full Bench judgment and the order of the Income Tax Appellate Tribunal is set aside. The order of the Assessing Officer shall stand restored so far as this issue is concerned.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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ANIS, J

Date: 17.11.2016
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