IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Tax Case No.1176 of 2008

M/s.Textool Company Ltd.,
(Presently M/s.Lakshmi Machine Works Ltd)
Perianaickenpalayam,
Coimbatore 641 020 ... Petitioner

Versus

The Assistant Commissioner of Income Tax,
Company Circle IV(2)
Race Course Road,
Coimbatore ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 8th February 2008 in ITA No.2754/Mds/2005.

For Appellant : Mr. R.Venkata Narayanan
for M/s.Subbaraya Aiyar
For Respondents : Mr. T.R.Senthilkumar

ORDER

(Delivered by Dr.Anita Sumanth, J.)

The admitted substantial question of law raised in the present appeal filed by the assessee is as follows:

> *"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to set off of brought forward depreciation loss as on 01.04.1997againstg the capital gains for the assessment year 2001-02?*
>
> *2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the clarification issued by the Finance Minister in his speech while presenting the Finance Bill, 1996 and the ratio of the decision of apex Court in the case of **Kerala State Industries Corporation Ltd v. CIT, 259 ITR 51**?*

2. Mr. R.Venkata Narayanan, appearing for the assessee and Mr.Senthilkumar appearing for the department would bring to our notice that the Income Tax Appellate Tribunal (in short 'Tribunal') has, in deciding the issue, set out above against the assessee, merely followed the decision of the Special Bench of the Tribunal in the case of *M/s.Southern Travels Vs. Assistant Commissioner of Income Tax (103 ITD 198)*. They would also bring

to our notice that the order of the Special Bench was the subject matter of appeal in TC(A).No.758 of 2007 and a Division Bench of this Court, vide order dated 20.1.2015 has remanded the issues back to the file of the Tribunal for consideration afresh. The Division Bench has been of the view that the core issue raised has not been addressed or answered by the Special Bench of the Tribunal.

3. In the light of the aforesaid order, the present appeal is remanded to the file of the Tribunal to be heard along with the appeal that was the subject matter of T.C.A.No.758 of 2007 in the case of *M/s.Southern Travels Vs. Assistant Commissioner of Income Tax*. The questions of law are thus returned unanswered and the appeal of the assessee is allowed by way of remand. No costs.

[H.G.R.,J.] & [A.S.M.,J]
06.02.2017

msr
Index:Yes/No
Internet:Yes/No

To

The Assistant Commissioner of Income Tax,
Company Circle IV(2)
Race Course Road,
Coimbatore .

HULUVADI G. RAMESH, J.
&
Dr. ANITA SUMANTH, J.

msr

Tax Case No.1176 of 2008

06.02.2017