IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.No.402 of 2013

M/s.Multivista Global Ltd.,
44, Rajam Towers,
Kavingner Bharathidasan Road,
Teynampet, Chennai - 600 018. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle IV(3)
Income Tax Department,
Main Building IV Floor,
121, M.G.Road, Nungambakkam,
Chennai - 600 034. ... Respondent

Prayer:
Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 14.03.2013 passed in I.T.A.No.394/Mds/2011 for the assessment year 2004-2005 by the Income Tax Appellate Tribunal, "C" Bench, Chennai as against the Order of the Commissioner Of Income Tax(Appellate)V Chennai, in ITA No 552/06-07 dated 15.11.2010 in PAN/GIR NO AAACM7613G as against the order of the Assistant Commissioner of Income Tax, Chennai, dated 29.12.2006 for the assessment yaer(2004-2005) in PAN/GIR NO AAACM 7613 GE/MU -1.

For Appellant : Mr.A.S.Sriraman
for M/s.S.Sridar
For Respondent : Mr.T.R.Senthil Kumar

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.This is an appeal filed by the Assessee under Section 260 A of the Income Tax Act, 1961 (in short, the Act). The appeal is directed against the judgment and order of the Income Tax

Appellate Tribunal (in short, the Tribunal), dated 14.03.2013.

2.The Assessee is aggrieved by the fact that it was not permitted to carry forward, the balance additional depreciation, to the following year, in which, the said asset had been installed and first put to use.

3.In the facts of the present case, the Assessee had acquired and put to use, plant and machinery worth Rs.5,32,26,735/-, during the previous year relevant to the assessment year, AY 2003-04.

3.1.In the said assessment year, the Assessee had restricted the additional depreciation to 50% of the total amount i.e., Rs.79,84,010/- as the plant and machinery was used for less than 180 days.

3.2.Under clause (iia) to sub-section (1) of Section 32 of the Income Tax Act, 1961, in the assessment year, in issue, i.e., AY 2004-2005, the Assessee claimed the balance additional depreciation amounting to Rs.39,92,005/-.

3.3.The Assessing Officer rejected the claim of the Assessee, for balance depreciation.

3.4.Being aggrieved, the Assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, CIT(A)].

3.5.The CIT(A) vide order dated 15.11.2010, allowed the appeal of the Assessee.

3.6.The Revenue being aggrieved, carried the matter in appeal to the Tribunal.

3.7.As indicated at the outset, the Tribunal sustained via the impugned judgment, in effect, the assessment order.

3.8.It is, in this background, that the present appeal has been filed by the Assessee.

4.In so far as the issue, which has been raised by the Assessee, is concerned, it is already been dealt with, by us, in judgment delivered in : T.C.A.No.157 of 2017, titled: Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited.

4.1.As a matter of fact, a perusal of the impugned judgment of the Tribunal, would show that the Tribunal has relied upon its own judgment in M/s.Brakes India Limited i.e., ITA No.1069/Mds./2010, dated 06.01.2012.

4.2.The said case was carried in appeal to this Court via, T.C.A.No.551 of 2013 and this Court, consequently, allowed the appeal of the Assessee.

5.Learned counsel for the Assessee relies upon the judgment delivered in : T.C.A.No.157 of 2017, titled: Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, and the judgement delivered in : T.C.A.No.551 of 2013, titled:

M/s.Brakes India Limited Vs. The Deputy Commissioner of Income Tax, today i.e., 14.03.2017.

6.Mr.Senthil Kumar, who appears for the Revenue, submits that there is one other submission of which, note had not been taken of by this Court.

6.1.It is, the learned counsel's contention that the expression “new machinery or plant” used in Section 32(1) (iia) of the Act, are clear indicative of the fact that balance depreciation cannot be carried forward.

7.According to us, this submission is untenable for the reason that the provision incorporates within itself certain attributes qua the asset in issue based on which the Assessee can claim additional depreciation.

7.1.The word 'new' which precedes 'machinery or plant' is indicative of the type of asset, on which, additional depreciation can be claimed.

7.2.In our opinion, it does not, in any way, limit or restrict the claim for additional depreciation, to the previous year, in which, the said asset is installed and used. Accordingly, in our view, the Assessee cannot be prevented from claiming balance additional depreciation in the following year.

7.3.Concededly, all other submissions have been dealt with, by us, in the judgments referred to, above.

8.Accordingly, the appeal of the Assessee is allowed and the impugned judgment of the Tribunal is set aside. However, there shall be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner of Income Tax,
   Company Circle IV(3)
   Income Tax Department,
   Main Building IV Floor,
   121, M.G.Road, Nungambakkam,
   Chennai - 600 034.
2. The Income Tax Appellate Tribunal,
   “C” Bench, Chennai.

+1 CC to Mr. S. Sridhar, Advocate sr 15992
+1 CC to Mr. T.R. Senthil Kumar, sr 16177

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