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.551 of 2013

M/s.Brakes India Limited,
Padi,
Chennai - 600 050. ... Appellant

Vs.

The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai 600 101. ... Respondent

Prayer:
Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 06.01.2012 passed in I.T.A.No.1069/Mds/2010 by the Income Tax Appellate Tribunal, "A" Bench, Chennai, arising against the Order of the Commissioner of Income Tax(Appeals), Large Tak Payer Unit, Chennai in ITA No. 27/09-10/LTU(A) dated 19.04.2010, arising against Assessment Order of the Income Tax Department dated 25.11.2009.

For Appellant : Mr.Venkatnarayanan
for M/s.Subbaraya Aiyar

For Respondent : Mr.T.Ravikumar

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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 06.01.2012.

2.Mr.Venkatnarayanan, who appears on behalf of the Assessee, has indicated to us, that the appeal is confined to only one ground, which is, the rejection of the Assessee's claim to carry

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forward additional depreciation, in the year subsequent to the previous year, in which, the subject asset was installed and put to use.

3.This issue has been dealt with by us vide judgment dated 06.03.2017, passed in T.C.A.No.157 of 2017, titled: Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited. We have made the following observations therein:

> "6.1. Therefore, the only issue, which arose for consideration before the Tribunal was, whether the additional depreciation, in the sum of Rs.8,03,233/-, could be claimed by the Assessee in the relevant assessment year, i.e., A.Y.2011-12, in respect of machinery, which was purchased and used for less than 180 days, in the previous year, 2009-10 (i.e., A.Y.2010-11).
>
> 7. The Tribunal, relying upon its own judgment in the case of Fresh & Honest Cafe Ltd. V. DCIT, dated 10.08.2016, passed in I.T.A.No.1373/Mds/2016 allowed the appeal of the Assessee.
>
> 7.1. Pertinently, in the judgment of the Tribunal, delivered in the case of Fresh & Honest Cafe Ltd. V. DCIT, reliance was placed on the judgment of the Karnataka High Court in the case of : CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka).
>
> 7.2. The issue, which arose for consideration before the Tribunal in the Fresh & Honest Cafe Ltd. V. DCIT, was also, whether the Assessee could be allowed balance additional depreciation in the relevant A.Y., following the A.Y., in which, the machinery had been purchased, and put to use, albeit, for a period of less than 180 days.
>
> 7.3. The Tribunal has, thus, in the context of the provisions of Section 263 of the Act, considered, as to whether the assessment order, as passed, qua the issue encapsulated above, erroneous and/or prejudicial to the interest of the Revenue.
>
> 7.4. In order to appreciate the issue at hand, relevant provisions of Section 32 of the Act, to the extent applicable in the A.Y. in issue, would be required to be noticed :
>
> "Section 32 (1) In respect of depreciation of –
>
> (i) buildings, machinery, plant or furniture, being tangible assets;
>
> (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the

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assessee and used for the purposes of the business or profession, the following deductions shall be allowed -

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided ....

(a)...

(b)....

Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) 1`or clause (iia), as the case may be:

Provided also ....

Provided also...

Provided also....

Provided also...

Explanation 1....

Explanation 2....

Explanation 3...

Explanation 4...

Explanation 5...

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

Provided ....."

(Emphasis is ours)

8. Pertinently, the Karnataka High Court, in a decision rendered in the case of CIT V. Rittal India

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(P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has interpreted the aforesaid provision, in particular, the proviso incorporated therein. The Karnatake High Court, in the said case, has come to the conclusion that additional depreciation granted under clause (iia) of Section 32(1) of the Act is for the purpose of affording benefits to the Assessees and, to encourage industrialization, either by setting up a new industrial unit, or, by expanding a new industrial unit, by purchasing and installing a new machinery, or, plant, and putting the same to use for the purposes of business.

8.1. The Court, went on to say, that while, the proviso appearing in Section 32(1) restricts the claim of depreciation to 50% of the amount calculated at the percentage prescribed for an asset referred to in clause (iia), nowhere does it restrict allowance of the balance 50% of the additional depreciation, which in percentage terms, would be 10% in the succeeding A.Y.

8.2. The relevant observations made by the Division Bench of the Karnataka High Court in the case of CIT V. Rittal India (P.) Ltd., as contained in paragraphs 7, 8 and 9 of the said judgment, for the sake of convenience are extracted hereafter :

> "..... 7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.
>
> 8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been down away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause

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(ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, if nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed....."

9. We are in respectful agreement with the view taken by the Division Bench of the Karnataka High Court, passed in CIT V. Rittal India (P.) Ltd.

10. According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.

10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.

10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

10.3. The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:

"..... 32. (1) ......

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Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia)for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: ....."

(Emphasis is ours)

11. We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.

11.1. The relevant part of the Memorandum is extracted hereafter:

"..... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2. A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

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11.3. In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4. We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5. In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days."

4.We would have thought, that this would have put an end to the matter. However, the learned counsel for the Revenue, Mr.Ravikumar seeks to advance the following additional submissions:

4.1.Firstly, that, this Court did not take into account, while passing the judgment in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, the judgment of the Division Bench of this Court in M.M.Forgings Limited Vs. Additional Commissioner of Income Tax, (2012) 349 ITR 673.

4.2.Secondly, the Circulars issued by the Central Board of Direct Taxes being: Circular no.8 of 2002 dated 27.08.2002 and Circular no.281 dated 29.11.1979, have not been taken note of in our judgment rendered in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited.

4.3.Third and lastly, that the provisions of Section 32(1)(iia) does not allow for additional depreciation, to be carried forward to the following year, in which, the asset is installed and put to use for the following reason.

4.4.It is the submission of the learned counsel that after depreciation is provided for, in the year of installation and use the written down value of the asset is made part of the block of assets, and it is this block of assets, which are subjected to depreciation, and therefore, the Assessee is not permitted to calculate and provide for depreciation separately, qua, the asset, on which, additional depreciation is provided.

5.In order to appreciate the aforesaid submissions, the following facts are required to be noticed:

5.1.The Assessee had claimed additional depreciation under Section 32(1)(iia) amounting to Rs.1,89,67,159/- during the

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relevant assessment year, i.e., AY 2006-07.

5.2.The additional depreciation was claimed at the rate of 7.5% being 50% of the prescribed rate, which was 15%.

5.3.The depreciation was claimed at the said rate as the subject asset was used for less than 180 days.

5.4.The said depreciation was claimed in the preceding assessment year, i.e., AY 2005-06, which is, when the asset was installed and put to use.

5.5.In the relevant assessment year i.e., AY 2006-07, the Assessee sought to claim the balance depreciation equivalent to 7.5%. The Assessing Officer, however, rejected the claim made by the Assessee qua the balance additional depreciation.

5.6.Being aggrieved, the Assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, CIT(A)]. The CIT(A) sustained the order of the Assessing Officer. The Tribunal, did likewise and therefore, the Assessee, is in appeal, before us.

6.As indicated right at the outset, the issue is covered in favour of the Assessee, by virtue of our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited. As noticed above, the Karnataka High Court in CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has also taken the same view.

6.1.We are informed that the Revenue has not assailed the judgment of the Karnataka High Court.

6.2.In our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, we have noticed the aforementioned judgment of the Karnataka High Court.

7.In so far as the first submission advanced by Mr.Ravi is concerned, according to us, the same is completely untenable.

7.1.The judgment of the Division Bench of this Court in M.M.Forgings Limited Vs. Additional Commissioner of Income Tax, did not deal the issue, which is at hand.

7.2.The issue, in hand, is as to whether balance additional depreciation could be carried forward to the year, following the previous year, in which, additional depreciation was claimed.

7.3.The Division Bench in M.M.Forgings case the said case was not concerned with the issue, with which, we are faced, that is, the right to carry forward the balance additional depreciation. Therefore, the judgment is completely distinguishable.

8.The second submission of Mr.Ravi, that Circular no.8 of 2002 dated 27.08.2002 and Circular no.281 dated 29.11.1979, have not been taken note of, in our judgment rendered in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, according to us, will not impact, either the reasoning or the conclusion reached by us, in the said matter.

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8.1.It is pertinent to note that the Circular no.281 dated 29.11.1979, pre-dates the insertion of the relevant provision, i.e., second clause to Section 32 (1) (iia). The said clause (iia), admittedly, was inserted by virtue of the Finance (No.2) Act, 2002, with effect from 01.04.2003.

8.2.In so far as the second Circular is concerned, i.e, Circular no.8 of 2002 dated 27.08.2002, in our view, in no way, helps the case of the Revenue. The Circular does not dwell on the point which we are confronted with.

8.3.In any case, according to us, the Circulars are not binding on the Court, though, they may be binding on the Revenue. [See CIT V. Hero Cycles Pvt. Ltd., (1997) 228 ITR 463 (SC)].

9.The last submission that Mr.Ravi advanced, was, in fact, predicated on the reasoning given by the Assessing Officer, which, according to us, is misconceived, as the manner of calculation of depreciation, cannot, to our minds, impede the claim of the Assessee for balance additional depreciation, in the year following the previous year, in which, the said asset is installed and put to use.

10.Therefore, for the aforesaid reasons, we find no merit in the submissions advanced by the Revenue.

11.The appeal is accordingly, allowed and the impugned judgment of the Tribunal is set aside. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
   Large Tax Payer Unit,
   1775, Jawaharlal Nehru Inner Ring Road,
   Anna Nagar Western Extension, Chennai 600 101.

2. The Income Tax Appellate Tribunal,
   "A" Bench, Chennai.

+1cc to M/s.Subbaraya Aiyar, Advocate, S.R.No.16181
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.16419

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RSK(CO)
CA(17/04/2017)

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