IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C. (A) No.294 of 2016

M/s.TVS Motor Company Ltd.,
No.29, Haddows Road,
Chennai 600 006. .. Appellant

-vs-

The Assistant Commissioner of Income tax,
Company Circle - III (2)
Chennai 600 034,
Now
The Assistant Commissioner of Income tax,,
Corporation Circle 3 (1),
Chennai 600 034. .. Respondent

Appeal filed under Section 260A of the Income-tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, ''A'' Bench, Chennai dated 28.08.2015 in ITA No.756/Mds/2014.

TC (A).294/2016
As against the proceedings of the Commissionere of Income Tax, Chennai I, Chennai. Dated 31.03.2009 in C.No.218/CIT-I/96/263/2008-09, as against the order of the Income-Tax Department, Chennai, dated 29.12.2006, P.A.No/GIR No.32024T/AAA Cs 7032B, for the Assessment year 2004/2005.

For Appellant : Mr.Venkat Narayanan

For Respondent : Mr.M.Swaminathan

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1.The present appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short 'the Act'). The appeal pertains to the Assessment Year (AY) 2004-05. The impugned judgment of Income Tax Appellate Tribunal, 'A' Bench, Chennai, (in short 'the Tribunal') is dated 28.08.2015.

2.The Tribunal, by virtue of the impugned judgment, has sustained, in entirety, the order passed by the Commissioner of Income-Tax (in short 'the Commissioner') under Section 263 of the Act. To be noted, the Commissioner had issued a notice to the appellant / assessee in pursuance of powers conferred upon him under Section 263 of the Act on several issues including the issue pertaining to the right of the assessee to carry forward the balance additional depreciation in the year following the relevant previous year, in which the subject asset was purchased and put to use.

3.It is common ground before us that in so far as this issue is concerned, it is covered against the Revenue by our judgments delivered today in the following cases, as also by the 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:

i. M/s.Multivista Global Ltd. vs. The Asst. Commissioner of Income Tax, TCA. No.402 of 2013
ii. M/s.Brakes India Ltd. vs. The Deputy Commissioner of Income Tax, TCA. No.551 of 2013
iii. M/s.Abi Showatech (India) Ltd. vs. The Deputy/Asst. Commissioner of Income Tax, TCA. Nos.699 to 702 of 2013

4.To be noted, at the point in time when the appeal was admitted, vide order dated 18.04.2016, the following substantial questions of law were framed:

i. Whether the Tribunal was right in law in holding that the Commissioner of Income Tax has rightly invoked jurisdiction under Section 263 of the Act ?
ii. Whether the allowance of additional depreciation by the Assessing Officer after eliciting replies from the assessee could be revised under Section 263 of the Act without establishing that the assessment order was erroneous and prejudicial to the interest of the Revenue ? and

iii. Whether the Tribunal was right in law in holding that the assessee is not entitled to claim additional depreciation during the year in respect of additions made to fixed assets in the second half of the assessment year 2003-04 ?''

5.In view of the aforementioned judgments, it is agreed by the learned counsels for both parties that question no. (iii) will have to be answered in favour of the assessee. It is ordered accordingly.

6.We are informed by the learned counsel for the assessee that the other two questions of law, which were raised and admitted by our predecessor Bench, which pertain to exercise of power by the Commissioner under Section 263 of the Act, were framed only qua the rejection of the assessee's claim in respect of disallowance of carry forward of balance additional depreciation to the subsequent year.

6.1.In these circumstances, learned counsel for the assessee says that the other two questions should also be answered in favour of the assessee, as the twin test prescribed for exercise of power under Section 263 of the Act is not fulfilled. The learned counsel says that the decision of the Assessing Officer could not be held to be erroneous, even if it is dubbed as prejudicial to Revenue's interest.

6.2.Mr.Swaminathan, on the other hand, says that notice under Section 263 of the Act dealt with not only, the issue pertaining to carry forward of the balance additional depreciation to the subsequent year, but also other aspects, qua which no appeal was preferred by the assessee.

6.3.It is the submission of Mr.Swaminathan that as long as the Court clarifies that the impugned judgment of the Tribunal will remain intact qua other issues, he would have no difficulty in the appeal being allowed.

7.Accordingly, we allow the instant appeal, making it clear that since the assessee has not assailed the impugned judgment of the Tribunal in this appeal with respect to the issues other than that which deals with the assessee's right to carry forward the balance additional depreciation to the subsequent year, the other parts of the impugned judgment will remain intact and will not be affected by the order passed by us today. The appeal, to our minds, will have to be allowed, even, vis-a-vis Questions (i) and (ii) as well, in so far as they relate to Question no. (iii), as it cannot be said, at this juncture, that the order of the Assessing Officer was erroneous in law. There shall be, however, no order as to costs.

sd/
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Registrar,
Income Tax Appellate Tribunal,
''A'' Bench, Chennai.

2.The Assistant Commissioner of Income tax,,
Corporation Circle 3 (1),
Chennai 600 034.

3.The Commissioner of Income-Tax,
Chennai-I, Chennai.

+1cc to M/s.Subbaraye Aiyan Padmanabhan, Advocate SR.No.16180
+1cc to Mr.T.Swaminathan, Advocate SR.No.15991

T.C. (A) No.294 of 2016

SK(CO)
GN(28/03/2017)