* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI

+I.T.T.A.No.412 of 2017

% Date: 22-08-2017

#Between:

The Commissioner of Income Tax,
Vijayawada.

…Petitioner

And

M/s. Balaji Agro Oils Pvt. Ltd.,
D.No.74-2-19, Old Check Post,
Patamata, Vijayawada.

…Respondent

! Counsel for the Petitioner : Mr. J.V. Prasad

^ Counsel for the Respondents : Mr. A.V.A. Siva Karthikeya

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> HEAD NOTE:

? Cases referred

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE SMT JUSTICE T. RAJANI

I.T.T.A.No.412 of 2017

JUDGMENT: (Per VRS,J)

This appeal is by the Revenue under Section 260A of the Income Tax Act, 1961 raising the following substantial question of law.

> "Whether in the facts and in the circumstances of the cae, the Tribunal was correct in law in holding that the assessee is entitled to claim depreciation under WDV method, since it filed its return of income before the due date u/s. 139(1) of the Act, though it did not exercise its option as contemplated under Rule 5(1A) fo the I.T. Rules?"

2. Heard Mr. J.V. Prasad, learned Senior Standing Counsel appearing for the appellant. Mr. A.V.A. Siva Karthikeya, learned counsel takes notice for respondent.

3. The respondent-Assessee filed its return of Income for the Assessment Year 2004-2005 on 28.10.2004. In other words, the return was filed before the due date as prescribed under Section 139(1) of the Act.

4. However, the Assessing Officer disallowed the depreciation of Rs.2.91 crores by invoking the provisions of Rule 5(1A) of the Income Tax Rules. The order of the Assessing Officer was set aside by the CIT Appeals and the same was confirmed by the Income Tax Appellate Tribunal forcing the Department to come up with the above appeal.

5. All that the Rules require is that the option to choose either the straight-line method or the written down value method, should be exercised before the due date for filing of the return. Admittedly, the respondent-Assessee filed the return on 28.10.2004 before the due date for filing of the return. The very filing of the return adopting a particular method of depreciation would tantamount to exercise of option in that particular manner. Therefore, the CIT Appeals as well as the Income Tax Appellate Tribunal were right in answering the question against the Revenue and in favour of the Assessee. We find that the question of law does not arise for consideration. Hence the appeal is dismissed.

6. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

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V.RAMASUBRAMANIAN, J.

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T. RAJANI, J.

22nd August, 2017.
Js.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI

I.T.T.A.No.412 of 2017

(Per VRS,J)

22nd August, 2017

Js.