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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL Nos. 391/2005 & 392/2005**

Date of decision: 14th November, 2017

M/S JUPITER RADIOS (REGD.) Appellant
Through Mr. Rajat Navet, Advocate.

versus

DCIT SPECIAL RANGE X Respondent
Through Mr. Asheesh Jain, Sr. Standing
Counsel & Mr. Shahrukh Ejaz, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL):

These two appeals under Section 260A of the Income Tax Act, 1961 (Act, for short) are filed by M/s Jupiter Radios (Regd), a partnership firm, relating to AY 1986-87 and AY 1987-88 and were admitted for hearing vide order dated 7th November, 2006, on the following substantial questions of law:-

“1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was “a transfer” within the meaning of Section 2 (47) of the Act

and that the provisions of Section 32A(5)/34(3)(b) were attracted?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the case where an individual takes an assets into a partnership and becomes a partner in the firm is analogous to a partner going out of a partnership firm and take certain assets with him?”

2. The appellant, as noticed above, is a partnership firm and during the relevant period consisted of Joginder Singh, Man Mohan Singh and Raja Singh as its partners.

3. In the original returns filed for the Assessment Years 1986-87 and 1987-88, the appellant-assessee had claimed development rebate/investment allowance under Section 32A/34(3) of the Act in respect of land, building, plant and machinery, etc.

4. However, within eight years of acquisition, in the Assessment Year 1991-92, plant and machinery of value of Rs.5,20,838/- on which investment allowance/development rebate of Rs.1,30,210/- had been claimed and allowed in the Assessment Years 1986-87 and 1987-88 was “transferred” to the said Raja Singh. This is an admitted fact.

5. Learned counsel for the appellant-assessee has submitted that Raja Singh, being a partner always had right, title, interest in the aforesaid machinery which was given to him on his retirement. He has referred to and relied upon decisions of the Supreme Court in *M/s Malabar Fisheries Company, Calicut versus Commissioner of Income Tax, Kerala*, (1979) 4 SCC 766 and *Sunil Siddharthbhai*

versus Commissioner of Income-Tax, Ahmedabad, (1985) 156 ITR 509 (SC).

6. Counsel for Revenue, on the other hand, submits that in the present appeals, the machinery belonged to the partnership firm and was an asset of the partnership firm. Within eight years of acquisition of the said machinery, it was transferred to Raja Singh, who upon retirement, ceased to have any connection with the partnership firm. He has referred to decisions of the Supreme Court in *Commissioner of Income Tax versus Narang Dairy Products*, (1996) 219 ITR 478 (SC) and *South India Steel Rolling Mills versus Commissioner of Income Tax*, (1997) 224 ITR 654 (SC).

7. We have considered the contentions raised by both the sides and find that in the present case the Tribunal was right in denying benefit of investment allowance/development rebate to the assessee, though not exactly for the reasons stated by them. There is no evidence or material on record and it is not even the claim of the appellant-assessee that Raja Singh had continued to use the said machinery for the balance period to satisfy the mandate of Section 35A of the Act. In fact, no such contention or claim was made before the Assessing Officer and the appellate authorities. This being the position, we do not even know whether or not the machinery had remained in the custody and use of Raja Singh for the period of years as per requirements of Section 35A of the Act. In the absence of even a claim or assertion to the said effect, the appellant-assessee cannot succeed.

8. Accordingly, we would hold that the Assessing Officer had rightly withdrawn benefit of the investment allowance/development rebate by passing an order under Section 155(4A) of the Act, once he came to know that machinery of value of Rs.5,20,838/- on which the investment allowance/development rebate of Rs.1,30,210/- was claimed and allowed was “transferred”. In the absence of even oral assertion that Raja Singh had continued using and operating the machinery, the appeal must fail.

9. In view of the aforesaid position, the appeals preferred have to be dismissed in view of the fact that the appellant-assessee has not stated and is not able to establish and show that the machinery had continued to be in use for a period of eight years. The questions of law are answered accordingly. The appeals are dismissed, with no order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 14, 2017
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