IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Tax Case Appeal No.417 of 2011

The Commissioner of Income Tax,
Chennai ... Appellant

-vs-

M/s.Nippo Batteries Co Ltd.,
Pottipatti Plaza, 4th Floor,
77, N.H.Road,
Chennai - 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 21.04.2011 in ITA No.1140/Mds/2010, for the Assessment year 2007-08 against the common order passed by the Income Tax Appellate Tribunal-B Bench, Chennai in I.T.A.Nos.1139 and 1140/MDS/10 and Assessment Years 2006-07 and 2007-08 dated 21.04.2011 against the order passed by the Commissioner of Income Tax (Appeals)-VI in I.T.A.No.352/10-11 dated 29.03.2011 against the Assessment order dated 21.12.2009 passed by the Additional Commissioner of Income Tax, Company Range IV(i/c), Chennai 34 for the Assessment Year 2006-07.

For Appellant : Mr.T.R.SenthilKumar

For Respondent : Mr.Vijayaraghavan
for M/s.Subbaraya Aiyer Padmanabhan

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J U D G M E N T

Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the appellant/Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 21.04.2011 in ITA No.1140/Mds/2010, for the Assessment year 2007-08.

2. Heard Mr.T.R.SenthilKumar, learned Standing Counsel for the appellant/Revenue and Mr.Vijayaraghavan, learned counsel for the respondent.

3. This Appeal has been admitted on the following Substantial Questions of Law:-

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in law in holding that the claim of the assessee on structure amounting to Rs.22,27,680/- are not capital but revenue?".
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to 100% depreciation on structure erected on rental premises as being temporary and therefore allowable as revenue expenditure u/s.30(a)(i)? "

4. We have perused the order of Assessment as well as the Order passed by the Commissioner of Income Tax and we find that the tax effect in this appeal is lesser than the threshold limit mentioned in Circular No.3 of 2018, dated 11.07.2018, issued by the Central Board of Direct Taxes, which fixes the monetary limit as Rs.50,00,000/- for the Department to pursue the matter. Furthermore, the Revenue has not been able to point out any distinguishing features, by which the Circular No.3 of 2018, dated 11.07.2018, cannot be applied.

5. Thus, for the above reasons, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs. The Revenue is at liberty to seek for restoration of appeal, if at a later point of time, it is found that the tax effect is above the threshold limit.

सत्यमेव जयते

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal Madras 'B' Bench.

2. The Commissioner of Income Tax(Appeals)-VI,
   121, Mahatma Gandhi Road, Chennai 34.

3. The Additional Commissioner of Income Tax,
   Company Range-IV,(i/c) Chennai 34.

+1 cc to Mr.Karthik Ranganathan, Advocate Sr.No.88736
+1 cc to Mr.Subbaraya Aiyar, Advocate Sr.No.88708

T.C.A.No.417 of 2011

SS(CO)
CSL/26.02.2019

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