IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Tax Case Appeal No.109 of 2018

The Commissioner of Income tax,
Chennai. ... Appellant

-vs-

M/s.Addison & Company Limited,
803, Anna Salai, Chennai-600 002. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 05.08.2016 made in ITA No.862/Mds/2016. Against the Commissioner of Income Tax (Appeals)-1 Chennai-600 034, dt:05/10/2015 made in ITA.No.213/14-15 (New No:ITA 113/(IT (A)-1/2014-15) for the Assessment year-2011-12, and,

Against the Assessment order of the Deputy Commissioner of Income -Tax, Company circle-I(1) Chennai, dt:27/03/2014 made in GIR/PAN Ax-1086 AAACA5199H for the Assessment year.2011-12.

For Appellant :: Mr.T.Ravikumar,
Standing Counsel

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 05.08.2016 made in ITA No.862/Mds/2016, raising the following substantial questions of law:

> "(i)Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the balance depreciation is allowable in the 2nd year of acquisition of assets since only 10% was claimed in the first year especially when there is no such express provisions in the I.T.Act to allow the balance left out additional depreciation in the subsequent years?

(ii)Is not the finding of the Tribunal bad by allowing the balance 50% of the depreciation in the year other than the year of installation especially when there is no provision under the Income tax Act for carry forward of the balance depreciation and claim the same?

(iii)Whether on the facts and in the circumstances of the case the Tribunal was right in upholding the order of CIT(A) in respect of development charges claimed at 5% on the initial lumpsum paid which has given an enduring benefit to the assessee and therefore was capital in nature and liable to be disallowed?

(iv)Is not the finding of the Tribunal bad especially when the Development charges which was claimed at 5% on the lumpsum payment for acquiring lease right for 99 years is to be allowed as a revenue expenditure especially when the assessee has not capitalized the lumpsum paid in his accounts nor had claimed it as a revenue expenditure in the year payment made and therefore liable to be disallowed?”

2.When the matter is taken up for admission, the learned Standing Counsel appearing for the appellant brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.07.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is less than the monetary limit imposed and therefore, the appeal is dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

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

2.The Commissioner of Income-Tax,
Chennai

3.The Commissioner of Income - Tax,
(Appeals)-1, Chennai-34.

4.The Deputy Commissioner of Income -Tax,
Company circle-I(1), Chennai

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.75606

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.76173

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PA(CO)
GSP(03/12/2018)