IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos.1189 and 1190 of 2009

Commissioner of Income Tax
Tiruchirappalli-1. Appellant in both cases/Respondent

Vs.

M/s.Rakhava Impex,
14 Kamarajapuram East, Karur.
Respondent in TCA 1189/2009/Appellant

M/s.Synthesis,
Plot No.69-74, SIDCO Industrial Estate,
Salem Bye-Pass Road,
Karur 639 001. Respondent in TCA 1190/2009/Appellant

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 22.5.2009 made in ITA Nos.1773/Mds/2008 and 1774/Mds/2008. Assessment Year 2005-06 and against the order of the Commissioner of Income Tax (Appeals), Tiruchirappalli dated 30/06/08 & 30/06/08 in ITA No. 134/CIT(A)/ TRY/2007-08 and ITA No.133/CIT(A)/TRY/2007-08 and against the order of the Deputy Commissioner of Income Tax, Circle -II, Tiruchirappalli dated 16/11/06 & 23/11/07 in PAN/GIR No.AADFR6764K and AALFS6633A.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.Pushpa

For Respondent : M/s.Subbaraya Aiyar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

These Tax Case Appeals have been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 22.5.2009 made in ITA Nos.1773/Mds/2008 and 1774/Mds/2008, by raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was right in holding that the assessee was entitled to claim depreciation on the windmill even though the windmill had only a 'test run' and had not been actually used in its business by getting connected to the TNEB grid on a regular basis during the accounting year?"

2. When the matters are taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.7.2018 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 cases, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeals filed by the Revenue are dismissed as not pressed, keeping open the substantial question of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

ssk.
To

1. Commissioner of Income Tax, Tiruchirappalli-1.

2. Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai

3. The Deputy Commissioner of Income Tax,
Circle II, Tiruchirapalli.

4. The Commissioner of Income Tax (Appeals)
Tiruchirapalli.

+1cc to Mr.M.Swaminathan, Advocate SR.No.38095
+1cc to M/s.Subbaraya Aiyar, Advocate SR.No.38783

TCA Nos.1189 & 1190 of 2009

KK(CO)
GMY(18/06/2019)