

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.1252 of 2009

M/s.Lakshmi Card Clothing Mfg.Co.(P)Ltd.
#1089, Avanashi Road
Pappanaickenpalayam
Coimbatore-641 037. Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle-IV(1)
Coimbatore-641 037. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, 'A' Bench in ITA No.206/Mds/2008 dated 29.12.2008, against the order of the Commissioner of Income Tax (Appeals)I, Coimbatore dated 18/12/2007 made in AS.No.7/07-08, r/wsec.147 of the I.T.Act. Against the order of the Deputy Commissioner of Income Tax, Company Circle -IV(1) Coimbatore, dated 14/03/2005 u/sc.143(3) for the assessment year 2003-04.

For Appellant : Mr.M.P.Senthilkumar for
Mr.Philip George

For Respondent : Mrs.K.G.Usha Rani,
Junior Standing Counsel

JUDGMENT

(Delivered by DR.VINEET KOTHARI, J.)

The assessee has filed this appeal under Section 260A of the Income Tax Act, raising the following substantial questions of law arising out of the order of the Income Tax Appellate Tribunal, 'A' Bench in ITA No.206/Mds/2008 dated 29.12.2008 for the Assessment Year 2003-2004, by which the learned Tribunal dismissed the assessee's appeal.

“(a)Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that

the appellant was not entitled to additional depreciation u/s.32(1)(ia) of the Income Tax Act, in respect of windmill?

(b)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the word "Article" does not include within its ambit "Power Generation"?"

2.The relevant findings of the learned Tribunal, whereby the Tribunal disallowed the claim of the assessee for additional depreciation of 15% on the investment made by the assessee in the two windmills, under Section 32(1)(ia) of the Act, are quoted below for ready reference:

"We have heard the rival submissions. As per the prescription of Section 32(1)(ia) additional depreciation at the rate of 15 per cent of the actual cost of the machinery or plant is available in the context of any new machinery or plant which is acquired or stalled after the 31st day of March, 2002 by an assessee engaged in the business of manufacture or production of any article or thing. We find that this issue stands covered by the decision of the C-Bench of this Tribunal rendered in the case of Tamil Nadu Chlorates vs. JCIT, 98 ITD 1. The Tribunal held in the context of Section 80HH that the word 'article' does not include within its ambit power generation. Similar view was taken by the D-Bench of this Tribunal in the case of M/s.Texmo Industries vs. ACIT in ITA No.2107(Mds)/2006 dated 25-6-2008. No contrary decision of binding nature was brought before us. We, therefore, respectfully following the precedents decide this issue in favour of the Revenue and against the assessee."

3.The present appeal was admitted by a Co-ordinate Bench of this Court on 24.11.2009, on the above substantial questions law raised by the appellant / assessee.

4.The learned counsel for the assessee has submitted that the assessee's case is covered by two decisions of this Court in the case of Commissioner of Income Tax v. Hi Tech Arai Limited, in (2010) 321 ITR 477 (Mad) and in the case of Commissioner of Income Tax v. Texmo Precision Castings, in (2010) 321 ITR 481 (Mad). Both these decisions were rendered in a short period of two months. Relevant portions from these judgments are quoted below for ready reference:

(i)Commissioner of Income Tax v. Hi Tech Arai Limited, in (2010) 321 ITR 477 (Mad).

"In the case on hand, the assessee is stated to have set up two wind mills in addition to the already existing four wind mills and thereby increased its power generation capacity by above 50 per cent. It is true that the assessee is a company engaged in the business of manufacture of oil seeds, moulded rubber parts, reed value assemblies apart from generation of power. After the installation of the additional wind mills, both prior to as well as after the installation of the additional wind mills, the assessee was using wind energy for generating power for its captive consumption apart from selling the surplus power generated to the Tamil Nadu Electricity Board. As far as application of Section 32(1)(iia) of the Act is concerned, what is required to be satisfied in order to claim the additional depreciation is that the setting up of a new machinery or plant should have been acquired and installed after March 31, 2002 by an assessee, who was already engaged in the business of manufacture or production of any article or thing. The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed up to March 31, 2002, should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds etc. is totally not germane to the specific provision contained in Section 32(1)(iia) of the Act.

In such circumstances, we are not able to appreciate the contention of the learned standing counsel for the appellant on the ground that the order of the Commissioner of Income-tax (Appeals) as confirmed by the Tribunal should be interfered with. It cannot also be said that setting up of a wind mill will not fall within the expression setting up of a new machinery or plant. We do not find any error in the conclusion of the Tribunal in confirming the order of the Commissioner of Income-tax (Appeals). We, therefore, do not find any question of law much less substantial question of law to entertain these appeals. These appeals fail and the same are dismissed. Consequently, M.P.No.1 of 2009 is also dismissed."

(ii) Commissioner of Income Tax v. Texmo Precision Castings, in (2010) 321 ITR 481 (Mad):

"The assessee was carrying on the business of castings for export and also generating and selling electricity from windmills. For the assessment year 2003-04, the assessee claimed additional depreciation on new windmills installed under Section 32(1)(iia) of the Income-tax Act, 1961. The Assessing Officer and the Commissioner of Income-tax (Appeals) disallowed the claim of the assessee. The Tribunal held in favour of the assessee. On appeal:

Held, dismissing the appeal, that the Tribunal was right in granting additional depreciation on the windmills installed by the assessee.

CIT v. Hi Tech Arai Ltd. [2010] 321 ITR 477 (Mad) followed.

CIT v. Hi Tech Arai Ltd. [2010] 321 ITR 477 (Mad) (para 5) referred to."

5. The provisions of Section 32(1)(iia) of the Act, prior to its substitution by the Finance Act 2005, with effect from 01.04.2006 as it stood in the relevant year, i.e., Assessment Year 2003-2004, is quoted below for ready reference:

"Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Clause (iia), was originally inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution, clause (iia) as inserted by the Finance (No. 2) Act, 2002, w.e.f. 1-4-2003 and amended by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, read as under :

“(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii) :

Provided that such further deduction of fifteen per cent shall be allowed to—

(A) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April, 2002; or

(B) any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of

increase in installed capacity by not less than ten per cent:

Provided further that no deduction shall be allowed in respect of—

(a) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(b) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or

(c) any office appliances or road transport vehicles; or

(d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year:

Provided also that no deduction shall be allowed under clause (A) or, as the case may be, clause (B), of the first proviso unless the assessee furnishes the details of machinery or plant and increase in the installed capacity of production in such form, as may be prescribed along with the return of income, and the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this clause. (See rule 5A and Form No.3AA.)

Explanation.—For the purposes of this clause,—

(1) "new industrial undertaking" means an undertaking which is not formed,—

(a) by the splitting up, or the reconstruction, of a business already in existence; or

(b) by the transfer to a new business of machinery or plant previously used for any purpose;

(2) "installed capacity" means the capacity of production as existing on the 31st day of March, 2002; "

6. Having heard the learned counsel for the parties and upon perusal of the aforesaid case laws and the provisions of the statute, viz. Section 32(1)(iia), we are of the opinion that the appeal in hand is covered by the aforesaid two decisions of the Co-ordinate Bench of this Court. Since the assessee satisfied the conditions for claiming additional depreciation on the

addition of a capacity of windmills by 750 kW as against the 1000 kW installed prior to 01.04.2002, the assessee is entitled to the said additional depreciation under the said provisions of the Act.

7. Accordingly, the appeal of the assessee is allowed and the questions of law framed are answered in favour of the assessee and against the Revenue. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

KM

To

1. The Income Tax Appellate Tribunal, Chennai 'A' Bench.
2. The Assistant Commissioner of Income Tax,
Company Circle IV(i), Coimbatore
3. The Commissioner of Income Tax (Appeals) I, Coimbatore
4. The Deputy Commissioner of Income Tax,
Company Circle IV(I) Coimbatore.

+1cc to Mr. Philip George, Advocate SR.No.25462

+1cc to Mr. T.R. Senthilkumar, Advocate SR.No.25919

सत्यमेव जयते Tax Case Appeal No.1252 of 2009

GP (CO)
GMY (10/05/2019)

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