IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.1.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.471 of 2010

Commissioner of Income Tax
Tiruchirapalli. Appellant

Vs.

M/s.James Textiles
2197, Srimuthu Nagar,
Chinnandan Koil Street, Karur. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 30.10.2009 made in ITA No.1651/Mds/2008, against the order dated 13/05/2008 made in G.I.No./PA No.AACFJ4236B for the Assessment year 2004-2005 on the file of the Commissioner of Income Tax (Appeals), Tiruchirappalli, against the order of the Deputy Commissioner of Income Tax, Circle -II, Tiruchirappalli dated 19/12/2006, made in AACFJ42368

For Appellant : Ms.Premalatha
Standing Counsel

For respondent : Mr.R.Kumar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,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, 'D' Bench, Chennai, dated 30.10.2009 made in ITA No.1651/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 depreciation of Rs.1,15,96,829/- on the Wind Mill installed on 25.3.2004 when there was no evidence regarding generation of electricity on a commercial basis during the previous year relevant to the

Assessment Year 2004-2005?"

2. When the matter is 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 case, the tax effect is said to be less than the monetary limit imposed and therefore, the appeal filed by the Revenue is dismissed as not pressed, keeping open the substantial question of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

ssk.

To

1. Commissioner of Income Tax (Appeals)
   Tiruchirapalli.

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

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

+1cc to Mr.M.Swaminathan, Advocate SR.No.7982

+1cc to Mr.T.N.Seetharaman, Advocate SR.No.8041

TCA No.471 of 2010

GP(CO)
GMY(23/03/2019)