IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.8.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.734 of 2013

The Commissioner of Income
Tax, Chennai ...Appellant

Vs

M/s.PMP Textiles Spinning Mills
Ltd., Chennai-3. ...Respondent

APPEAL under Section 260-A of the Income Tax Act, 1961 against the order dated 11.2.2013 made in ITA.No.811/Mds/2011 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2006-07 against the Appellate order of the Commissioner of Income Tax, (Appeals-V), Chennai - 34, dated 31.01.2011 and made in ITA NO.170/2007-08 & 125/2008-09 for the Assessment Year 2005-06 & 2006-07 and against the Assessment Order of the Assistant Commissioner of Income Tax, Company Circle - V(4), Chennai dated 24.11.2008 and made in PAN No:AAACP 4346 D for the Assessment Year 2006-2009.

For Appellant : Ms.V.Pushpa, SC and Ms.S.Premalatha, SC

For Respondent: Mr.A.S.Sriraman for Mr.S.Sridhar

Judgment was delivered by T.S.Sivagnanam,J

This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 11.2.2013 made in ITA.No. 811/Mds/2011 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2006-07.

2. The appeal was admitted on 30.10.2013 on the following substantial questions of law:

> "i. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee has satisfied the requirement

of Second Proviso to Rule 5(1A) of the Income Tax Rules and they are entitled for depreciation on windmills as per Appendix I is valid ?

ii. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the Proviso to Section 32(1)(i) and Rule 5(1A) clearly stipulate that only rate of depreciation on the method as provided for in Appendix IA will be relevant for power generating machinery?

iii. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the assessee is entitled at the rate of 7.69% of the cost and this rate has correctly been allowed by the Assessing Officer ?

iv. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled for higher rate of depreciation even though the assessee had filed return of income within the due date and has also not exercised its option separately? And

v. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in not adjudicating the grounds of appeal of the Revenue regarding completion proceedings by the Commissioner of Income Tax (Appeals) in violation of Rule 46A of the Income Tax Rules?"

3. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the appellant and Mr.A.S.Sriraman, learned counsel appearing for the respondent.

4. It is not disputed by the learned counsel on either side that the substantial questions of law framed for consideration in this appeal have been answered in favour of the assessee and against the Revenue by a Division Bench of this Court in the case of CIT, Coimbatore Vs. Kikani Exports (P) Ltd. [reported in (2015) 369 ITR 500].

5. Following the said decision, the above tax case appeal is dismissed and the substantial questions of law framed are answered against the Revenue and in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
Chennai 'D' Bench., Chennai.

2.The Commissioner of Income Tax, (Appeals-V),
Chennai - 34.

3. The Assistant Commissioner of Income Tax,
Company Circle V(4),
Chennai.

+1cc to Mr.M.Swaminathan,Advocate, SR.No.72331
+1cc to Mr.S.Sridhar, Advocate, SR.No.71123

TCA.No.734 of 2013

Kak(28/09/2019)