IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.414 of 2014

Commissioner of Income Tax,
Coimbatore. .. Appellant/ Respondent

-vs-

M/s.Chiranjeevi Wind Energy Ltd.,
No.45/3A, Arts College Lane,
Opp: Bala Lodge,
Coimbatore-641 018. .. Respondent/ Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 21.10.2013, made in I.T.A.No.342/Mds/2013 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2009-10 as against the Order of the Commissioner of Income Tax, dated 04.12.12 in ITA 171/11-12 for the Assessment Year 2009-10 and as against the Order dated 8.12.11 of the Deputy Commissioner of Income Tax CBE in PAN No.GIR No.AAACC8761 H for the Assessment Year 2009-10.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

: assisted by Ms.K.G.Usharani,
Standing Counsel

For Respondent : Mr.R.Venkatanarayana
For M/s.Subbaraya Aiyar
Padmanabhan & Ramamani

JUDGMENT
(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 21.10.2013, made in I.T.A.No.342/Mds/2013 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2009-10.

2.The above appeal was admitted on 08.09.2014, on the following substantial questions of law:-

> "(i) Whether on facts and circumstances of the case, the Tribunal was right in holding that where expenditure has been incurred towards raising the additional equity shares which are attributed to the extension of undertaking, the claim for deduction under Section 35D of the Act is allowable?
>
> (ii) Whether based on material and evidence before it, the Tribunal could have come to the conclusion that the assessee had extension of its existing unit and is therefore eligible for deduction under Section 35D of the Act?
>
> (iii) Whether on facts and circumstances of the case, the Tribunal was right in not holding that the expenditure towards legal and consultancy charges which are claimed in full cannot be included in the claim for deduction under Section 35D?
>
> (iv) Whether the Tribunal is right in granting deduction under Section 35D of the Act following the judgments in the case of EID Parry India Ltd., vs. DCIT, 209 Taxman 214 and CIT v. Ashok Leyland Ltd, 349 ITR 663, when there are five decisions of this Court which are against the assessee? and
>
> (v) Whether in the facts and circumstances of the case, the Tribunal is right in not considering the earlier judgments of this Court on the very same issue, which are in favour of the department?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel for the appellant - and Mr.R.Venkatanarayana, learned counsel, for M/s.Subbaraya Aiyar, Padmanabhan & Ramamani, for the respondent.

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019, dated 08.08.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5.In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

abr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal
'C' Bench, Chennai.

2. The Commissioner of Income Tax, (Appeals-I),
Coimbatore.

3. The Deputy Commissioner of Income Tax,
Company Circle-I(3), Coimbatore.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, SR.No.73373
+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.72910

T.C.A.No.414 of 2014

Kak(22/10/2019)