In the High Court of Judicature at Madras

Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.299 of 2017

Principal Commissioner of Income Tax-3, Coimbatore ...Appellant

Vs

M/s.Saravana Ricemill, Tirupur ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.10.2016 in ITA No.2039/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench for the assessment year 2011-12 against the Order of the Commissioner of Income Tax (Appeals)-3 Coimbatore dated 15/03/2016 in I.T.A.No. 370/14-15 PAN.No. AARFS3907R Assessment Year 2011-2012 against the assessment order of the Income Tax Officer WARD 1 (1) Tiruppur PAN.GIR.No AARFS 3907R Assessment Year 2011-2012 dated 30.11.2013.

For Appellant : Mr.T.R.Senthilkumar, SSC
For Respondent : Mr.R.Kumar

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The Revenue has filed the appeal by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is
>
> (2)
>
> justified in law in allowing the assessee's claim of depreciation @ 80% on windmill when

the return of income was filed belatedly for the first year ? And

ii. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in allowing the assessee's excess claim of depreciation when filing of the audit report within due date would satisfy the requirement of exercising option under Rule 5(1A) when the return of income of the first year was filed belatedly?”

3. The Revenue seeks to withdraw this appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the 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.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Madras 'A' Bench.

2.The Commissioner of Income Tax (Appeals) - 3,
Coimbatore.

3. The Income Tax Officer WARD 1(1),
Tiruppur.

+1cc to Mr.T.N.Seetharaman, Advocate, S.R.No. 372
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 208

TCA.No.299 of 2017

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GN(14/02/2019)