IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.1207 of 2009

AREVA T & D India Limited
[formerly known as ALSTOM Ltd.,]
No.314/315, Anna Salai,
Chennai 600 018. ... Appellant

Vs.

The Asst. Commissioner of Income Tax,
Company Circle I 1]
121, Nungambakkam High Road,
Chennai 600 034. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench "A" Chennai dated 03.11.2008 passed in I.T.A.No.290/Mds/2006 relating to the Assessment year 2002-03 against the order of the Commissioner of Income Tax (Appeals) III Chennai 34 dated 03.10.2005 and made in A. No. 93/2005-2006/A-III and against the order of the Assistant Commissioner of Income Tax Company Circle I(1) Chennai 34 dated 31.03.2005 in PA/GIR No. AX1-061 for the Assessment year 2002-2003.

For Appellant : Mr.M.P.Senthil Kumar
For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

Both the learned counsels at the bar had submitted that a Coordinate Bench of this Court, in T.C.A.Nos.1443 & 1444 of 2007 dated 12.11.2013 between the same parties M/s.Alstom T & D India Limited, which is now called as 'AREVA T & D India Limited', had remanded the case back to the learned Income Tax Appellate Tribunal on both the issues of claim of warranty provision and on the issue of allowability of the higher rate of depreciation at 40% on plastic moulds. However, after the said remand under the order of this Court dated 12.11.2013, both the learned counsels for the parties do not have any information as to what happened in the Tribunal after such remand.

2.The learned counsel for the Assessee Mr.M.P.Senthil Kumar submitted that for the present assessment year 2002-03 also, both the questions of law admitted in the present appeal are one and the same, the matter may be remitted back to the learned Tribunal. Therefore, both the issues for all the three years assessment can be decided simultaneously. The relevant observations of the Coordinate Bench of this Court from the order dated 12.11.2013 are quoted below for ready reference.

> "6. It is seen from the decision of the Apex Court reported in [2009] 314 ITR 62 (SC) [Rotork Controls India P.Ltd. vs. Commissioner of Income Tax] that the decision of this Court reported in [2007]293 ITR 311 (Mad) [cited supra] was reversed holding that warranty provisions are made because of assessee's present obligation, as a result of past events resulting in an outflow of resources and a reliable estimate made on the amount of the obligation and such a provision was tenable in law. Thus, the Apex Court held that the provision of liability would depend on the nature of the business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting adopted by the assessee and it would also depend upon the historical trend and upon the number of articles produced.
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> 7. Considering the decision of the Apex Court giving guidelines for considering the claim of warranty provision and there being no discussion on merits of the case by the Income Tax Appellate Tribunal, this Court holds that the order of the Income Tax Appellate Tribunal has to be set aside. Accordingly, the order of the Income Tax Appellate Tribunal is set aside and the matter is restored to the file of Income Tax Appellate Tribunal for its consideration on the basis of the decision of the Apex Court referred to above on issue Nos.1 and 2 regarding provisions towards warranty.
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> 8. As regards the issue raised by the assessee, claiming higher depreciation on plastic moulds, the Income Tax Appellate Tribunal followed its earlier decision relating to the assessment years 1994- 95 to 1996-97 and allowed the Revenue's appeal. The said issue is also under challenge in these Tax Case (Appeals).
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> 9. Both sides agreed that issue Nos.3 and 4 raised herein as regards the claim of depreciation at 40% are the same as that was raised in assessee's own case, which was decided by this Court in Tax Case (Appeal)

Nos.422, 424, 2455 and 2538 of 2006 dated 03.09.2012.

10. A reading of the order passed by this Court dated 03.09.2012 in Tax Case (Appeal) Nos.422, 424, 2455 and 2538 of 2006 [M/s.Alstom T & D India Limited, Chennai-600 043 vs. Joint Commissioner of Income Tax, Chennai], would show that the matter was remitted back to the Assessing Officer for considering the claim of depreciation in the context of the contention taken by the assessee that the unit at Pondicherry is a separate unit engaged in the manufacture of moulds and that the said unit was granted relief under Section 80HH of the Act. The assessee also placed before this Court, the acknowledgement from the Government of India, Ministry of Industry, Department of Industrial Development, Entrepreneur Assistance Unit that the unit at Pondicherry was engaged in the manufacture of switches, plastic plugs, sockets etc. Thus, for the purpose of considering the relief of depreciation at 40%, this Court remitted the matter back to the Assessing Officer for the purpose of finding out whether recognition was granted to the unit at Pondicherry as a separate unit and if the material showed proves that the Pondicherry unit was established as a separate unit then following the decision reported in 203 ITR 614 [Commissioner of Income Tax vs. Amco Batteries Ltd.], the assessee would be entitled to claim depreciation at 40%, for which the assessee was permitted to produce the Certificate of Registration as regards the Pondicherry unit recognised as a separate unit so as to enable the Assessing Officer to pass orders on grant of relief as per the provisions of the Act.

11. As far as the present case is concerned, since we have already remitted the matter back to the Income Tax Appellate Tribunal for deciding the issue on provision for warranty, we feel that as regards the claim of depreciation also the matter may be restored back to the file of the Income Tax Appellate Tribunal.

12. Accordingly, the matter is remitted back to the file of the Income Tax Appellate Tribunal for deciding the issue on the claim of depreciation on plastic moulds at 40% and the Tribunal shall call for a report from the Assessing Officer to pass further orders on the claim of depreciation. We also direct the assessee to produce the necessary Certificate before the Income Tax Appellate Tribunal as was produced before this Court in Tax Case (Appeal) Nos.422, 424, 2455 and 2538 of 2006 [cited supra] relating to the assessment years 1995- 96 and 1996-97 for arriving at a decision in this regard."

3.Accordingly, we dispose of the present Appeal filed by the Assessee and setting aside the order of the learned Income Tax Appellate Tribunal dated 03.11.2008 for assessment year 2002-03, we remand the case back to the Income Tax Appellate Tribunal for deciding the said appeal in accordance with law afresh in terms of the aforesaid order passed by the Coordinate Bench of this Court on 12.11.2013 for previous assessment years viz., 2000-01 and 2001-02.

4.The Tax Case Appeal is disposed of accordingly. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Sgl

To

1.Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2.The Assistant Commissioner of Income Tax
Company Circle I(1)
121, Nungambakkam High Road Chennai 34

3.The Commissioner of Income Tax (Appeals)III
121, Nungambakkam High Road Chennai 34

+1 CC to Mr. Philip George, advocate sr 6617
+1 CC to Mr.T.Ravikumar, Advocate sr 6273.

T.C.A.No.1207 of 2009

MP(CO)
SP(24/02/2020)