IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM

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

Tax Case (Appeal) No.1445 of 2010

The Commissioner of Income Tax-II
Chennai ... Appellant/Appellant

Vs.

M/s.Jailaxmi Auto Works & Agenices P Ltd
No.82/B, Veerappanpalayam Road
Chinna Sengodampalayam Thindal (PO)
Erode-638 009 (PAN No.AAACJ5269K) ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 06.08.2010 in ITA No.283/Mds/2010 for the assessment year 2005-2006 against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 21.12.2009 made in PA No.AAACJ5269K for the assessment year 2005-2006 against the order of the Assistant Commissioner of Income Tax, Circle -I, Erode, dated 15/12/2008 made in PA No.GIR No.AAACJ5269K for the assessment year 2005-2006.

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

For Respondent : Mr.R.Senniappan

J U D G M E N T

(Judgment of the Court was 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, 'A' Bench, Chennai, by raising the following substantial questions of law:

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law that the assessee is entitled to claim for additional depreciation on Wind Mills, even though the assessee had not exercised the option under Second proviso to Rule 5(1A) before the due date for filing the return under Section 139(1) in order to claim depreciation at 80%?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing 80% depreciation, even though the assessee had purchased and installed wind mill, no electricity was generated and no income generated under wind mill?"

2. When the matter was taken up for hearing, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, 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.1,00,00,000/- (Rupees One Crore).

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 questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(ADI (MDU) )

//True copy//

Sub Assistant Registrar

KST
To

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

2. The Commissioner of Income Tax, Circle I, Erode.

3. The Assistant Commissioner of Income Tax,
Circle I, Erode

4. The Commissioner of Income Tax -II, Chennai.

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.No.18581

T.C.(A) No.1445 of 2010

VBA(CO)
GMY(22/05/2020)