IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

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

T.C.A.No.5 of 2016

Commissioner of Income Tax
Central I
108, Nungambakkam High Road,
Chennai - 600 034. ... Appellant

Vs.

M/s.Narmada Chemicals Pvt. Ltd.,
Now known as M/s.Power Chemicals P. Ltd.
R.S.No.94/1, Semblambalayam Village,
Kodadu PO, Pondicherry 605 110.
PAN: AAB CN 2036 R ... Respondent

Prayer : 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 11.08.2015 in ITA.No.305/MDS/2015 and aganist the order of the , commissioner of Income Tax(Appeals)-VI,Chennai-34 dated 17.07.2014,made in ITA.No.766/13-14/A-VI, for the assessment year 2007-2008,and aganist the order of the Assistant Commissioner of Income-Tax Circle-I,Pondicherry,dated 22.3.2013 ,made in P.A.No.(G.I.No.AABCN2036 R/N-1001 for the assessment year 2007-2008.

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

For Respondent : Mrs.S.Sriniranjani
For M/s.G.Baskar
M.P.Senthilkumar

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JUDGMENT

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

Both the learned counsels submit that the controversy involved in the present case is covered by a decision of this Court in the case of CIT Vs. Kikani Exports (P.) Limited [2014] 369 ITR 500 (Madras) and in the case of CIT Vs. ABT Limited, [2015] 370 ITR 159 (Madras).

2.The Appeal is admitted by a Coordinate Bench of this Court on 19.01.2016 on the following questions of law.

> "1.Whether the return of income filed by the assessee under Section 139(1) of the Income Tax Act claiming depreciation can be treated as exercising of option before the due date as prescribed in the second proviso to Rule 5(1A) of the Income Tax Rules?
>
> 2.Whether the Appellate Tribunal and CIT(A) is right in going into merits of the case when it held that the reopening of assessment itself is bad in law?"

3.The relevant findings of the learned Tribunal in para 5 of the order dated 11th August 2015 are also quoted below for ready reference.

> "5.After hearing both the sides, we find that the Ld. CIT (A) had rightly decided the issue by following the decision of the Chennai Bench of the Tribunal cited herein above because in the case of the assessee the claim was made in the return of income as well as reflected in the audit report filed along with the return of income, therefore it would amount to exercise of the option as required under Second proviso to Rule-5(1A) and accordingly depreciation @ 80% on the windmill of the assessee has to be allowed. Further the Hon'ble Jurisdictional High Court in the case of CIT Vs. ABT Ltd. reported in [2015] 370 ITR 159 (Mad.) has held as under:-
>
> "If the assessee exercised the option in terms of the second proviso to rule 5(1A) of the Income-tax Rules, 1962, at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to exercise of option is required. Since the returns were filed in accordance with section 139(1) of the Income-tax Act, 1961, and the form prescribed therein makes a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required."
>
> In these circumstances we do not find any reason to interfere with the order of the Ld. CIT (A). Accordingly, we hereby confirmed the order of the Ld.

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CIT (A)."

4.A Coordinate Bench of this Court in the case of CIT Vs. Kikani Exports (P) Ltd. (supra) held in paras 20 and 21 as under:

> "20. A reading of the above-said decision of the Bombay High Court makes it clear that if the assessee exercised the option in terms of second proviso to Rule 5(1A) of the Income Tax Rules at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to of exercise of option is required. Since the returns are filed in accordance with Section 139(1) of the Income Tax Act and the form prescribed therein make a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required, as contended by the Department. We are in agreement with the reasoning of the Tribunal.
>
> 21. Accordingly, the question of law is answered in favour of the assessee and against the Revenue."

5.Similarly in CIT Vs. ABT Ltd. (supra), another Bench of this Court held as under:

> "4.In the above-said decision, this Court, following the decision of the Bombay High Court reported in 229 ITR 772 (CIT V. Vijaya Hirasa Kalamkar (HUF), held as follows:
>
> "20. A reading of the above-said decision of the Bombay High Court makes it clear that if the assessee exercised the option in terms of second proviso to Rule 5(1A) of the Income Tax Rules at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to of exercise of option is required. Since the returns are filed in accordance with Section 139(1) of the Income Tax Act and the form prescribed therein make a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required, as contended by the Department. We are in agreement with the reasoning of the Tribunal.
>
> 21. Accordingly, the question of law is answered in favour of the assessee and against the Revenue."
>
> 5. Following the above-said decision of this Court, substantial questions of law Nos.1 to 4 are answered in favour of the assessee and against the Revenue."

6.Since the questions involved in the present appeal are also same and the matter is covered by the two decisions of this

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Court, respectfully following the same, we dispose of the present Appeal filed by the Revenue also in same terms and answer the first question in favour of the Assessee and against the Revenue. In view of the first question answered as above in favour of the Assessee, the second question does not require any answer.

7.Accordingly, this Tax Case Appeal is disposed of in same terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

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

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

3.The Assistant Commissioner of Income ,Circle-I,
Pondicherry.

4.The Commissioner of Income Tax, Central 1,108,
Nungambakkam,High Road,Chennai-34

+1cc to Mr.G.Baskar, Advocate,Sr.No.23396
+1cc to Mr.T.R.SenthilKumar, Advocate, Sr.No.23078

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MR(CO)
GS(08/06/2020)

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