IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.Nos.271 & 272 of 2018
and
C.M.P.No.4902 of 2018

The Commissioner of Income Tax,
Chennai ..Appellant (in all the appeals)

Vs

M/s.Bharat Scans Pvt. Ltd.,
197, Peters Road, Royapettah,
Chennai 600 034

PAN: AABCB2272K ..Respondent (in all the appeals)

PRAYER : Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 26.05.2017 passed in ITA.Nos.3290 & 3291/Mds/2016. Appeal filed against the order of the Commissioner Income Tax(Appeals)1 121 Mahatma Gandhi Road, Chennai-34 made in ITA No.384/CIT(A)-1/15-16 dated 20.09.2016 for the year 2013-2014 against the order of the Commissioner of Income Tax (Appeals)1 121, Mahatma Gandhi Road, Chennai-34. Made in ITA No.147/CIT(AY 15-16) dated 20/09/2016 for the year 2012-2013 against the Assessment order u/s 143(3) made in PAN/GIR No.AABCB2272K for the Assessment year 2013-2014 and Assessment order made in GIR/PAN AABCB2272K for the Assessment year 2012-2013.

For Appellant : Mr.T.Ravikumar
(in all the appeals)
Senior standing counsel
For Respondent : Mr.R.Kumar
for Mr.T.N.Seetharaman

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The respondent/assessee company is running a scan centre Laboratory for the benefit of the patients.

2. T.C.A.No.271 of 2018:

The said company filed its return for the Assessment Year 2012-13 on 29.12.2012, admitting an income of Rs.1,34,64,610/-. The case was selected for scrutinisation under CASS and notice was issued under section 143(2) to the assessee. After giving opportunity to the assessee, the assessment was completed. The Assessment Officer disallowed the claim for deducting 40% on UPS which was claimed as medical diagnostic equipment stating that 160KVA UPS cannot come under the Machinery and Plant as stated in Schedule III (xia) of New Appendix I as per Rule 5 of the Income Tax. The Assessment Officer therefore disallowed the depreciation claim of Rs.4,27,02,549/- and arrived at assessed income Rs.5,80,76,560/-. Aggrieved by the Assessment Order passed by the Assessment Officer an Appeal was filed before CIT (A). The CIT(A) accepted the contention of the assessee and allowed the appeal relying upon the decision of the Tribunal passed in ITA.No.1300/Mds/2013 dated 13.02.2014 and directed the Assessment Officer to grant depreciation of 40%.

3. T.C.A.No.272 of 2018:

The assessee company filed its return for the Assessment Year 2013-14 on 23.10.2013, admitting an income of Rs.1,64,56,420/-. The case was selected for scrutinisation under CASS and notice was issued under section 143(2) to the assessee. After giving opportunity to the assessee, the assessment was completed. The Assessment Officer disallowed the claim for deducting 40% on UPS which was claimed as medical diagnostic equipment stating that 160KVA UPS cannot come under the Machinery and Plant as stated in Schedule III (xia) of New Appendix I as per Rule 5 of the Income Tax. The Assessment Officer therefore disallowed the depreciation claim of Rs.3,55,14,452/- and arrived at assessed income Rs.6,06,53,346/-. Aggrieved by the Assessment Order passed by the Assessment Officer an Appeal was filed before CIT(A). The CIT(A) accepted the contention of the assessee and allowed the appeal relying upon the decision of the Tribunal passed in ITA.No.1300/Mds/2013 dated 13.02.2014 and directed the Assessment Officer to grant depreciation of 40%.

4.The revenue aggrieved over the said orders of the Commissioner filed appeals before the Tribunal. The Tribunal upheld the orders of the Commissioner. Against the said orders of the Tribunal only the present Appeals have been filed.

5.The Appeals have been admitted on 19.06.2018 on the following substantial question of law:

"Whether the Tribunal erred in law in holding that the assessee is entitled to 40% depreciation on the Medical Diagnostic Equipment instead of the 15%

allowed by the Assessing Officer, holding the same to be life saving device? ”

6.Mr.T.Ravikumar, learned senior standing counsel appearing for the revenue would find fault with the order passed by the Commissioner as well as Tribunal for having accepted the assessee's claim and allowing 40% depreciation for 160KVA UPS as Medical Equipment. He would submit that 160KVA UPS cannot be termed as life saving equipment as per Schedule III (xia) of the depreciation table in New Appendix. Unless it forms an integral part of the Machinery and Plant, 40% deduction cannot be given. He would rely upon a few judgments to stress the point that UPS cannot be called as life saving medical equipment as stated in Schedule III (xia) of New Appendix I of the Income Tax. He would submit that only those 15 equipments as described in Schedule III (xia) of New Appendix I alone are entitled to 40% depreciation as they are coming under the life saving equipment, whereas 160KVA UPS is not mentioned in Schedule III (xia) of New Appendix I and therefore, it cannot be granted 40% depreciation.

7.The learned senior standing counsel would also submit that the concession/exemption/rebate/incentive/subsidiary given by way of exemption notification should be interpreted very strictly. In this regard, he would rely upon the constitution Bench judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and others reported in 2018 (9) SCC 1 and judgment of the Hon'ble Supreme Court in the case of Alpine Industries Vs. Collector of Central Excise, New Delhi reported in 2003 (3) Supreme Court Cases 111 to the effect that while interpreting tariff entries in taxation statute, the entries are to be understood by their popular meaning that is, the meaning attached to them by those using the product and not to be understood by the scientific and technical meaning.

8.The appellant relied upon a Division Bench judgment of this Court in the case of Dinamalar Vs. Income Tax Officer reported in 2016 (389) ITR 0094 Mad to stress the point that if the machines for which depreciation is being sought do not fall under the definition of the entries found in the Appendix I, the Assessee cannot claim depreciation. He relied upon another judgment in the case of Commissioner of Income Tax Vs. Bazpur Co-operative Sugar Factory Ltd., reported in 2005 (198) CTR 0590 and stressed the point that the particular equipment regarding which the allowance is sought is not falling under the Appendix I. He relied upon another judgment of Rajasthan High Court in the case of Commissioner of Income Tax Vs. Bhola Ram reported in 2002 (177) CTR 0082 which is relating to the rig and compressor used for drilling bore wells and that rig and compressor mounted on a lorry, does not fall under the category of “motor lorry” occurring in entry No.III(ii)D(9) of Part I of Appendix I to the Income Tax Rules. He relied upon another judgment rendered by the Authority for Advance Rulings, New Delhi in the case of In Re: Enercon (India) Ltd., reported in 2011 SCC online AAR-IT 35 to drive home the point that in the absence of any ambiguity in the schedule, the same has to be followed in letter and spirit.

9.By relying upon those judgments, the learned counsel would submit that 160KVA UPS will not come under the schedule of life saving medical equipment and therefore, the orders of the Tribunal as well as the Appellate Commissioner have to be reversed.

10.On the other hand, Mr.R.Kumar, learned counsel representing Mr.T.N.Seetharaman, learned counsel for the respondent would submit that 160KVA UPS would come under Schedule III (xia) of New Appendix I of the Income Tax and in the Assessee's own case for the year 2009-10, the Income Tax Commissioner as well as the Tribunal accepted the respondent's contention that 160KVA UPS would come under the definition of the life saving medical equipment as stated in Schedule III (xia) of New Appendix I of the Income Tax.

11.The appellant would submit that 160KVA UPS is specifically used for the purpose of running the diagnostic machines and equipments, in case of power failure and therefore, it would come under the definition of life saving medical equipments. He would rely upon the judgment of this Court in the case of Commissioner of Income Tax Vs. Vasantha Subramanian Hospital Pvt. Ltd., reported in 2018 (408) ITR 176 (Mad) to submit that any narrow interpretation cannot be given with regard to definition of Medical Equipments and it cannot be restricted to the items mentioned in Part III item (xia), based on the medical literature.

12.Heard the parties and perused the records.

13.Schedule III (xia) of New Appendix I of the Income Tax is extracted as follows:

"(xia) Life saving medical equipment, being
(a) D.C. Defibrillators for internal use and pace makers
(b) Haemodialysors
(c) Heart lung machine
(d) Cobalt Therapy Unit
(e) Colour Doppler
(f) SPECT Gamma Camera
(g) Vascular Angiography System including Digital Subtraction Angiography
(h) Ventilator used with anaesthesia apparatus

(i) Magnetic Resonance Imaging System
(j) Surgical Laser
(k) Ventilator other than those used with anaesthesia
(l) Gamma knife
(m) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for chemotherapy
(n) Fibre optic endoscopes including, Paediatric resectoscope/audit resectoscope, Peritoneoscopes, Arthoscope, Microlaryngoscope, Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo Bronchoscope, Video Laryngo Bronchoscope and Video Oesophago Gastroscope, Stroboscope, Fibreoptic Flexible Oesophago Gastroscope
(o) Laparoscope (single incision)"

Though the technology is advancing everyday, the Appendix I which is called as New Appendix I is more than a decade old and it came into effect from the Assessment Year 2006-07 onwards. The 15 life saving medical equipments which have been given in Schedule III (xia) of New Appendix I of the Income Tax are the machines which were available at the time of framing Appendix, viz., 15 years ago. Every year new inventions and innovations are being made by the Scientists, especially in the medical field. As already found by the Division Bench of this Court in the case of Commissioner of Income Tax Vs. Vasantha Subramanian Hospital Pvt. Ltd., reported in 2018 (408) ITR 176 (Mad), item 'd' of Schedule III (xia) of New Appendix I of the Income Tax, viz., Cobalt Therapy Unit has become out of date and is no more in use. The cancer treatment made by chemotherapy, radiotherapy and a new invention has also come into effect by way of Proton therapy. When such is the case, relying upon the 1½ decades old Appendix is of no use and the very purpose of giving exemptions to the life saving medical equipments would be frustrated if this Court goes by new Appendix, which came into effect during the 2006-07. The legislature should be conscious enough to amend the Appendix. When the legislature is not coping up with time, definitely this Court is duty bound to take into consideration the advancement in the medical field, modern equipments and apparatus used in the medical field.

14.No doubt, 160KVA UPS is not enlisted in Schedule III (xia) of New Appendix I of the Income Tax. Merely because it is not enlisted, it cannot be negatived that it is not a life saving medical equipment. The purpose for which 160KVA UPS is used only for running medical equipments like ultra sound scan, PET/CT scan, MRI scan and other diagnostic machineries. The respondent itself is a diagnostic lab. The purpose for which the diagnostic lab has purchased 160KVA UPS is only for using it, in case of emergency viz., power failure to see that diagnostic machines are not stopped due to power failure. The medical equipment should not fail due to power failure.

15.As rightly pointed out by the Commissioner of Appeals, 160KVA UPS is not an ordinary UPS being used commonly in the household or office. It is a special UPS which is valued at Rs.53,02,620/-. It has been stated in para 5.2.3 of Appellate Commissioner's order as follows:

> "5.2.3 Keeping in view the facts and circumstances of the case and the true import of the words "life saving medical equipment being SPECT Gamma Camera" as discussed above, it is held that the medical diagnostic imaging equipment more particularly described as PET/CT installed by the appellant is a "life saving medical equipment being SPECT Gamma Camera" and therefore eligible for depreciation @ 40% as stipulated in depreciation table part-III item (xia). Furthermore, as regards denial of depreciation on UPS, it is seen that the UPS is very much a part of this equipment. The cost of this UPS is about Rs.53 lakhs whereas UPS as is ordinarily understood as a accessory to computers costs about Rs.5000 to 10000. This fact alone justifies that "UPS 160KVAA GE MAKE" costing Rs.53,02,620/- is a part & parcel of PET/CT and has no independent use and therefore, eligible for the same rate of depreciation of 40%. Thus, the appellant succeeds on these grounds of appeal. Ground Nos.5 to 7 raised by the appellant are allowed."

From the above it is very clear that the Appellate Commissioner categorically stated that UPS is very much important for medical equipment and it is a part and parcel of PET/CT and has no independent use and is eligible for depreciation of 40%. The said order passed by the Appellate Commissioner for the Assessment year 2009-10 was followed by the Appellate Commissioner in the present case, allowing 40% depreciation reversing the order of the Assessment Officer.

16.As already pointed out by this Court in the earlier paragraph, the purpose for which 160KVA UPS is being used has been seen. Usually, for an ordinary computer, the UPS used would cost about Rs.5,000/- to Rs.10,000/-. Therefore, there is a difference between ordinary UPS and 160KVA UPS. The use is only at the time of emergency, that is during power failure. When the medical equipments are used for the patients, the power should be available continuously. If there is a power failure, the diagnostic machines would not work, resulting in lot of inconvenience to the patients. Therefore, 160KVA UPS has got no independent use except when it is connected with medical equipments used by the respondent, which is a diagnostic laboratory.

17.As already stated by this Court, the Revenue authorities should send proposals regularly to the Ministry to amend the Appendix, taking into consideration advance in medical field and availability of modern equipments which are being used currently. The officials themselves should enrich themselves with knowledge regarding modern day equipments, so that they could give proposals to the authorities to amend the Appendix, in the interest of public especially patients.

18.Relying upon the 15 year old Appendix will not serve the purpose. Our country is a thickly populated country and more people are suffering from many diseases, especially cancer. If that is so, the people should get best treatment and for that, modern and technical machineries are necessary and therefore, items mentioned in Schedule III (xia) of New Appendix I are of no use. This Court is aware of the fact that everyday inventions are being made. The legislature while framing the Appendix would not have visualized the modern day inventions as on date available at the time during 2006-07. Therefore, the Commissioner of Appeals as well as Tribunal are right in giving 40% depreciation to 160KVA UPS.

19.Though Mr.Kumar, relied upon TCA.No.550 of 2015 filed for the Assessment Year 2009-10, by the revenue which has been dismissed by this Court on 27.08.2019, Mr.Ravikumar, learned senior standing counsel rightly pointed out that the said Appeal was not dismissed on merit, but it was only on the low tax effect and the subtantial questions of law in that appeal were also left open. Therefore, the said judgment cannot be relied upon. However, this Court agrees with the views taken by the Appellate Commissioner in that case.

20.There is no quarrel with regard to the dictum laid down by the constitution Bench of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and others reported in 2018 (9) SCC 1, with regard to strict interpretation regarding concession or exemption notification. In this case, exemption notification is very old and therefore, this Court has to step in and interpret the concession notification in such a way that it is in tune with time for the reasons stated in the above paragraphs. Therefore, the substantial question of law is answered against the appellant.

21.Accordingly, Appeals fail and the same are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax,
Chennai

2.Income Tax Appellate Tribunal 'D' Bench,
Chennai.

3.The Deputy Commissioner of Income Tax,
Corporate Circle(2)
Chennai

+2cc to Mr.T.Ravikumar, Advocate in SR.NO..1727
+1cc to Mr.T.N.Seetharaman, Advocate in SR.NO..2031

T.C.A.Nos.271 & 272 of 2018

KS(CO)
RV(22/10/2020)