

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2020

Pronounced on : 04.09.2020

Coram

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.Nos.368 and 369 of 2018 and
C.M.P.Nos.7404 and 7406 of 2018

V.Sabitamani
C/o Pioneer Corporation,
358, Metupalayam Road,
Coimbatore - 641 043 ... Appellant in both the
appeals/Respondent

Vs.

The Assistant Commissioner of Income Tax
Circle - II
No.63, Race Course Road,
Coimbatore - 641 018 ...Respondent in both the
appeals/Appellant

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, are directed against the Common Order passed by the Income Tax Appellate Tribunal "A" Bench in I.T.A Nos.2038/Mds/2016 and 1719/mds/2016 dated 03.02.2017 for the assessment year 2009-2010.

TCA 368/18

Against the order of Income Tax officer ward II(4) Coimbatore, in PAN.AJXPS7331Q dated 16/6/2014 against the order of Assistant Commissioner of Income Tax-Circle II-Coimbatore, in PAN No. AJXPS7331Q dated 9/11/2011

TCA 369/18

Against the order of Income Tax officer ward II(4) Coimbatore, in PAN.AJXPS7331Q dated 16/6/2014 against the order of Assistant Commissioner of Income Tax-Circle II-Coimbatore, in PAN No. AJXPS7331Q dated 9/11/2011

For Appellant : Mr.J.Balachandar
For Respondent : Mr.T.R.Senthilkumar
Sr.Standing Counsel and
Mrs. K.G.Usharani

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

T.S.SIVAGNANAM, J.

These appeals filed by the assessee under Section 260-A of the Income Tax Act, 1961 [hereinafter referred to as 'Act'] are directed against the common order dated 03.02.2017 in I.T.A.Nos.1719/Mds/2016 and I.T.A.Nos.2038/Mds/2016 for the assessment year 2009-2010.

2. These appeals were admitted on 10.07.2018 to consider the following substantial question of law. :-

"Whether the actual purchase price of a second-hand asset can be ignored by purported recourse to Explanation 3 to Section 43(1) of the Income Tax Act, 1961 ?"

3. The assessee, an individual filed for return of income for the assessment year under consideration, AY-2009-2010 admitting the total income of Rs.12,92,820/-. The assessment was selected for scrutiny and notice under Section 143(2) of the Act was issued, after which, the assessment was completed by an order dated 09.11.2011. The assessment was reopened under Section 147 of the Act on the ground that there was an excess claim of depreciation in respect of purchase of a windmill. After affording an opportunity to the assessee, the assessment was completed under Section 143(3) read with Section 147 of the Act by an order dated 16.06.2014 disallowing the depreciation to the tune of Rs.77,12,645/-.

4. Aggrieved by such order, the assessee filed appeal before the Commissioner of Income Tax [Appeals] - 1, Coimbatore [CIT(A)] raising several contentions and laying stress upon the valuation report submitted by the Chartered Engineer cum Approved and Registered Valuer at the time of sanction of a term loan by the Canara Bank, Gandhipuram Branch, Coimbatore for the purchase of the windmill. It was contended that there is a huge market for second-hand wind mills and the assessing officer failed to note the location of the windmill, the make and capacity, it had more than 15 years of balance use life and past performance of the mill in generating electricity. Thus, it was contended that owing to all these features, the assessee had purchased the windmill for a sum of Rs.2,36,00,000/-.

5. The Commissioner of Income-Tax [Appeals] - II by an order dated 30.03.2016 partly allowed the appeal filed by the assessee, faulted the valuation method adopted by the assessing officer to be unscientific and ultimately, determined the cost of the windmill at Rs.1,50,00,000/- and directed the assessing officer to grant depreciation on the said amount. Aggrieved by such order, the assessee as well as the Revenue filed appeals before the Tribunal. By the impugned order, the appeal filed by the Assessee has been dismissed and the appeal filed by the Revenue has been allowed. This is how the assessee is before us by way of these two Tax Case Appeals challenging the common order passed by the Tribunal dated 03.02.2017.

6. We have elaborately heard Mr.J.Balachandar, learned counsel for the appellant / assessee and Mr.T.R.Senthilkumar, Senior Standing Counsel and Mrs.K.G.Usharani, Junior Standing Counsel for the respondent / revenue. We have narrated the factual background, those facts, which are relevant for the purpose of deciding these appeals.

7. The sheet anchor of the submissions of the learned counsel for the appellant is by contending that the Tribunal failed to take into consideration the material facts, namely, the valuation report given by an approved government valuer of the Canara Bank, who had valued the windmill at Rs.2,95,00,000/- and Rs.2,55,34,000/- respectively, which has not been considered by the Tribunal.

8. The Tribunal ought to have considered that the assessing officer has invoked Explanation 3 to Section 43(1) of the Act on mere surmises and conjunctures by treating the transaction as a device to reduce tax liability. Further, the Tribunal failed to note the lifespan of the windmill, i.e., more than 15 years, which is a relevant material to determine the market value.

9. Further, it is submitted that the Revenue did not dispute the fact that the assessee and the vendor were unconnected persons. Consequently, the genuinity of the transaction was not questioned. Therefore, there was no reasons to disbelieve the amount paid by the assessee for the purchase of the second-hand windmill. It is also submitted that the vendor not only sold one windmill to the appellant, but to two other persons and the appellant alone has been targeted.

10. Per contra, the leaned senior counsel for the Revenue had referred to the factual position which was recorded by the assessing officer as well as by the Tribunal and submitted that the Tribunal rightly dismissed the appeal filed by the assessee, as the cost of the windmill has been unduly inflated for the

purpose of reducing the assessee's tax liability and the assessee has not made any ground to interfere with the order passed by the Tribunal.

11. When the assessment was re-opened under Section 147 of the Act, the assessee was given a questionnaire calling for details with regard to the claim for depreciation on the acquisition of the second-hand windmill on 29.03.2017.

12. After considering the submissions made by the assessee, which were identical to that of the arguments advanced before us, which were recorded above, the assessing officer discussed the aspect as to how the real worth of the asset has to be computed and in doing so, how the diminution of the economic value of the asset over its period of views has to be determined and applied.

13. After noting the technical details, the assessing officer observed that as far as taxation is considered under the Income Tax Act, the accelerated depreciation is the incentive to increase the installed capacity of windmill in the country and a person, who installs the windmill gets the benefit of such accelerated depreciation.

14. It was pointed out that the original owner, the assessee's vendor had claimed depreciation to the extent of Rs.3 Crores within six years and when the owner sells the windmill to the new purchaser, the new purchaser cannot get the same benefit for the enhanced value, as there is no additional wind energy capacity installed. Ultimately, the assessing officer disagreed with the assessee and disallowed the claim of depreciation to the tune of Rs.77,12,640/-.

15. The CIT[A], in our considered view, while partly allowing the assessee's appeal, proceeded to make a adopt estimations of the value and fixed the sum at Rs.1,50,00,000/-. We find that there is no scientific basis for such fixation of the value of the second-hand windmill and such fixation has been done based on the personal opinion of the CIT[A]. Therefore, the Tribunal was fully justified in allowing the Revenue's appeal. With regard to the assessee's appeal, the Tribunal re-appreciated the factual position and in particular, noted that the manufacture of the windmill has certified that the windmill, which was sold to the assessee is no more in the market value and the technology has become obsolete. The Tribunal also considered as to what would be the effect of a report of the government valuer and noted Explanation III to Section 43(1), which requires the assessing officer to arrive at an objective satisfaction. Further, the Tribunal observed that valuations may be relevant in ordinary circumstances, but when cumulative

depreciation claimed was far in excess of the cost, the valuation report of the approved valuer becomes insignificant.

16. Thus, in our considered view, the Tribunal has reappreciated the factual position and come to a conclusion that the order passed by the assessing officer requires no interference. Thus, we conclude by observing that there is no question of law much less substantial question of law arising for consideration in these appeals.

Accordingly, the appeals fail and they are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

ssd

To

1.The Income Tax Appellate Tribunal "A" Bench
Chennai

2.The Income Tax officer, ward II(4), Coimbatore.

3.The Assistant Commissioner of Income Tax
Circle II-Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Sr.No.28874

Pre-delivery Common Judgment in
T.C.A.Nos.368 and 369 of 2018

PVS (CO)
GS(23/10/2020)