IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM :

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

T.C.A.No.409 of 2018

Principal Commissioner of Income Tax Central 2,
No.108, Mahatma Gandhi Road,
Chennai. ... Appellant

Vs

M/s.Bhima Jewellery,
NMC, No.37/5-2,
Avvai Shanmugam Salai,
Meenakshipuram,
Nagercoil - 629 001.
PAN: AAF FB N 4737 J. ...Respondent

PRAYER: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961 against the order dated 31.05.2017 in I.T.A.No.108/Mds/2017 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2011-12 against the Appellate order passed by the Commissioner of Income Tax (A)-3 Madurai,dated 07.10.2016 made in PAN: AAF FB N 4737 J, and

against the Assessment order passed by the Joint Commissioner of Income Tax Tuticorin Range,Tuticorin dated 27.03.2014 made in PAN: AAF FB N 4737 J.

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

For Respondent : Mr.K.Ravi

J U D G M E N T

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

This tax case appeal has been filed against the order of the Income Tax Appellate Tribunal dated 31.05.2017 in I.T.A.No.108/Mds/2017 in dismissing the appeal filed by the Revenue.

2.The facts of the case are as follows:

The assessee (respondent herein) is in the business of manufacture and sale of gold and other precious metals. In this case, assessment under Section 143 (3) of the Act was completed on 27.03.2014 determining the total income at

Rs.13,62,37,670/-. On the ground of Disallowance of depreciation for 6 months on wind mills, the same was put to use for less than 180 days. During the course of assessment proceedings, the assessing officer found that the assessee had erected two windmills KER 448 & KER 449 at the cost of Rs.7.10 Crores and claimed full value of depreciation @ 80%, but had entered into Power Purchase Agreement (PPA) with Kerala State Electricity Board (KSEB) on 30.09.2010 and commercial production started only on 23.10.2010, the date on which the first reading was taken by KSEB.

3.The assessee claimed that the windmills KER 448 & KER 449 were connected to the electricity grid on 17.07.2010 and 29.10.2010 respectively and depreciation should be allowed at full rates as they were put to use for more than 180 days. The assessing officer rejected this claim and restricted the depreciation to 50% of the eligible depreciation on the ground that the windmills were used only for less than 180 days. Further, disallowed the claim of depreciation for civil and electrical components considered as a part of cost of windmill and allowed depreciation at the rates prescribed for windmill. The Assessment Officer found that the assessee had claimed depreciation at the rate of 80% on generator, transponder and civil installations claiming them as integral part of windmill and they have been installed and connected with the windmill to support the working of the windmill. Accordingly, disallowed the claim of depreciation for civil and electrical components of windmill @ 80% and allowed @ 15% and 10% respectively.

4.Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) on two grounds. With regard to the Depreciation on Wind Mills, the CIT(A) quoted the report of the Additional DIT (Investigation), Trivandrum dated 19.03.2014 which indicates that the Chief Engineer, Kozhikode, KSEB issued permission for interconnection to KSEB grid on 06.07.2010 and 27.09.2010 based on which the windmills were interconnected to the grid on 17.07.2010 and 29.10.2010 and the Power Purchase Agreement was signed on 30.09.2010 in both cases and held that the assessee is entitled to full claim of depreciation even if the machine is kept ready for use or used for trial run without actual commercial production.

5.Further it is seen that on the claim of depreciation on civil and electrical components, the CIT(A) relied on the decision of Hon'ble Karnataka High Court in the case of CIT Vs.Karnataka Power Corporation (247 ITR 268) and allowed higher depreciation @ 80% in respect of civil work and other electrical installation works considering the same as a part of the cost of the windmill.

6.Aggrieved by the Appellate order, the Revenue filed an appeal before the Appellate Tribunal. The Appellate Tribunal held that during the intervening period between 17.07.2010 and 23.10.2010, there was production of electricity and further held that electricity was generated by the windmills on its connection to the grid which admittedly happened on 17.07.2010. The ITAT has also held that there is no requirement that the asset should be put to use for commercial production and as per the provisions of Section 32 of the Act, the asset should be put to use for claiming depreciation. With these observations, the Hon'ble ITAT held that the CIT(A) was justified in taking a view that the windmills were put to use for a period more than 180 days during the relevant previous year and allowing the full claim of depreciation and dismissed the Department's Appeal. Aggrieved by the order of the Income Tax Appellate Tribunal, this present appeal has been filed.

7.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant and Mr.K.Ravi, learned Counsel for the respondent.

8.This tax case appeal is admitted on the following substantial question of law:

> "(i)Whether the Appellate Tribunal is correct in law in holding that the windmill was put to use for more than 180 days and therefore, the assessee is entitled for full depreciation?
>
> (ii)Whether the Appellate Tribunal is correct in holding that there is no requirement that the asset should be put to use for commercial production and as per the provisions of Section 32 of the Income Tax Act, the asset should be put to use for claiming depreciation?"

9.With regard to the question as to whether the respondent is entitled to 100% depreciation allowance, even though windmill was put to use beyond 180 days, it is already covered by the Judgment of this Court in T.C.A.No.120 of 2009 dated 07.02.2019 in the case of "B.Loganathan Vs.Income Tax Officer, Ward VIII (3), Chennai." Therefore, the first question of law is answered against the Revenue.

10.With regard to the next question of law, whether the failure of the respondent to choose the Written Down Value entitling him 100% allowance will deny him the said allowance or he has to get 7.8% allowance alone as per the Straight Line Method of depreciation, the failure of the auditor cannot be put against the respondent. Moreover, the issue has already been covered by the Judgment of this Court in the case of "Commissioner of Income-tax, Coimbatore Vs. Kikani Exports (P) Ltd" reported in "[2015] 55 taxmann.com 428 (Madras)" and hence, this is also answered against the Revenue.

11.Hence, this appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. THE INCOME TAX APPELLATE TRIBUNAL CHENNAI 'D' BENCH

2.THE COMMISSIONER OF INCOME TAX (A)-3 MADURAI
3.THE JOINT COMMISSIONER OF INCOME TAX TUTICORIN RANGE,TUTICORIN.
4.THE PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2,
NO.108, MAHATMA GANDHI ROAD,
CHENNAI.

+1cc to Mr.T.R.Senthil Kumar , Advocate SR.No. 4594

T.C.A.No.409 of 2018

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A.SK(24/02/2020)