IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.416/2017
and CMP No.10331/2017

Principal Commissioner of Income Tax 4
No.121, Mahatma Gandhi Road,
Chennai - 600 034 ... Appellant

vs.

M/s. Lotte India Corporation Ltd,
4/169, Rajiv Gandhi Salai (OMR),
Kandanchavadi Bus Stop,
Perungudi Taluk, Chennai - 600 096. ... Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, Madras A Bench, dated 28.09.2016 in ITA No.525/Mds/2016, against the order of the commissioner of Income Tax Appeals 8, Chennai, dated 28/12/2015 in ITANo.53/2013-14 in the assessment year 2010-11.

Against the order of the Deputy Commissioner of Income Tax Chennai, dated 31.03.2013 PAN/GIR No.AAACP1916F in the assssment year 2010-11.

For appellant : Mr.Karthik Ranaganathan

For respondent : Mr.Sandeep Bagmar

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. 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, Madras A Bench, dated 28.09.2016, by raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case the Appellate Tribunal is correct in law in holding that Unabsorbed depreciation relating to the assessment year 2001-02 and assessment years prior thereto can be set off in subsequent years, without any limit, as per the amended provision of section 32[2] of the Income Tax Act?

2. Whether the Tribunal was correct in deleting the disallowance on the claim of setting off of brought forward unabsorbed depreciation amounting to Rs.1,19,02,780/- pertaining to Asst Years 1999-2000 and 2000-2001 ?"

3. When the matter is taken up for hearing, learned counsel for the Department 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).

4. 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 withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

kpl/tar

To
1.The Income Tax Appellate Tribunal,
Madras A Bench.

2.The Principal Commissioner of income Tax 4,
121, Mahatmagandhi road,
Chennai-34.

3.The Commissioner of Income Tax Appeals 8,
Chennai.

4.The Deputy Commissioner of Income Tax,
Chennai.

T.C.A.No.415 & 416/2017

MG(CO)
RMP(15/09/2020)