IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO.56 OF 2018

The Pr. Chief Commissioner of Income Tax (Central),
Nagpur … Appellant

Versus

M/s. R.B. Seth Shreeram Narsingdas, Nagpur
and another …Respondent

Mr. Anand Parchure, Advocate for Appellant.
Mr. Anand Jaiswal, Senior Advocate, assisted by Shri S.N. Dongre, Advocate for Respondents.

CORAM : NITIN JAMDAR & ANIL S. KILOR, JJ
DATE : 22 JANUARY 2021

P.C. :

This Appeal filed under Section 260A of the Income Tax Act, 1961 pertains to the Assessment Year 2006-07. Out of various questions taken in the appeal memo, the following question is pressed before us :

> *"e. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in deleting the disallowance of Rs.2,75,60,358/- being additional depreciation on Windmills claimed by the assessee by holding that no incriminating material was found on this issue?"*

2. The Respondent- Assessee is a Partnership Firm engaged in the business of mining and manufacturing of iron ore. The Respondent filed a return of income under Section 139 of the Income Tax Act, 1961 on 31 October 2006 for the Assessment Year 2006-07. Assessment under Section 143(3) of the Act was done on 29 December 2008 assessing the total income of Rs.27,86,04,750/-. Search proceedings were initiated under Section 132 on 24 September 2010. A notice under Section 153A was served on the Respondent on 12 September 2011 and the Respondent filed a return of income declaring the total income at Rs.27,62,90,309/-. The Assessing Officer disallowed the addition of Rs.2,75,60,358/- on account of disallowance of additional depreciation on Windmills. The Respondent- Assessee filed an appeal and the Commissioner of Income Tax deleted the addition. The Appellant- Revenue filed an appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the Appeal of the Revenue by the impugned order dated 27 December 2017, upholding the order passed by the Commissioner of Income Tax (Appeals) passed on 27 March 2015.

3. Mr. Anand Jaiswal, the learned Senior Advocate for the Respondent- Assessee, has placed before us a copy of the order passed by the Division Bench of this Court in Income Tax Appeal No.21 of 2011 with Income Tax Appeal No.22 of 2011, dated 18 July 2017. These Appeals arose from exercise of powers by the Commissioner of Income Tax under Section 263 of the Act, treating the order passed by the Assessing Officer as erroneous and

prejudicial to the interest of the Appellant- Revenue. Show cause notice was issued to the Respondent to justify its claim for additional depreciation on Windmills under Section 32(1)(iia) of the Act. The order was passed by the Commissioner of Income Tax under Section 263 of the Act on 9 July 2010 setting aside the order passed by the Assessing Officer on 29 December 2008. Thereafter the proceedings reached this Court and in Appeal, the same question regarding additional depreciation of 20% on Windmill under Section 32(1)(iia) of the Act was raised and was held against the Revenue. This decision was rendered by this Court on 18 July 2017.

4. The learned Counsel for the parties state that due to lack of communication, this order could not be pointed out when the impugned order came to be passed by the Tribunal on 27 December 2017. In any case, it is an admitted position that this Court has already held the question of law raised in the present Appeal against the Appellant- Revenue.

5. In these circumstances, no question of law arises in this Appeal. The Appeal is dismissed.

(ANIL S. KILOR, J) (NITIN JAMDAR, J)

Lanjewar

Prashant Lanjewar

Digitally signed by Prashant Lanjewar
Date: 2021.01.28 14:52:30 +0530