IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Tax Case (Appeal) No.1905 of 2008
and
M.P.No.1 of 2008

M/s Indwel Lianings Pvt. Ltd.,
No.F/20, Second Main Road,
Anna Nagar,
Chennai-600 102 ...Appellant

Versys

The Assistant Commissioner of Income-tax
Company Circle II (3),
121, Nungambakkam high Road,
Chennai-600 034. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 13.06.2008 made in ITA.No.1632(Mds)/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2003-04.

For Appellant : Mr. Baskar
for Mrs.N.Muthukumar

For Respondent : Mr.Karthik Ranganathan for
Mr.M.V. Rajesh.

J U D G M E N T

(Judgment of the Court was delivered by **MOHAMMED SHAFFIQ, J**)

The following substantial question of law was originally raised in this appeal and the same was admitted by this Court on 14.11.2008 namely:-

> "*Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in rejecting the appellants claim for relief under Section 80 IA of the Income Tax Act.*"

2. Subsequently, at the instance of the appellant, the following additional substantial questions of law were raised for consideration:

> "*a. Whether the Income Tax Appellate Tribunal was right in denying depreciation @ 100 % claimed on the specific assets, merely because the appellant was found ineligible for deduction under section 80IA(4)?*
>
> *b. Whether the Income Tax Appellate Tribunal was justified in summarily dismissing the claim for 100% depreciation on specified assets, without appreciating the fact those plant and machineries were actually used for infrastructure facility?*
>
> *c. Whether the Income Tax Appellate Tribunal is justified is not directing the Assessing Officer to allow the depreciation for the later years on the revised written down value having confirmed the Aos action of denying 100% depreciation this year?*"

3. Before we proceed further, it may be relevant to state that the learned counsel for the appellant, during the course of argument in this appeal, has confined his arguments only with regard to the first question raised by way of

additional substantial question of law. Consequently, the other questions framed for consideration in this appeal were not pressed into service.

4. The appellant was engaged in the business of providing anti corrosive lining and insitu linings of infrastructure facilities. During the assessment year 2002-2003, they had entered into a contract with State of Gujarat for insitu linings of infrastructure facilities for water supply project. The appellant claims that they are entitled to the benefit under section 80IA(4) of the Income Tax Act. Further, it is their specific claim that they are entitled for 100 % depreciation on the plant and machinery used by them in execution of the said works contract, in terms of Section 32 of Income Tax Act, read with Entry 7 Rule 5 of Income Tax Rules of Appendix I (Table of rates at which depreciation is admissible), which reads as under:

> "7.Machinery and plant, acquired and installed on or after the 1st day of September, 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility under clause (i) of sub-section (4) of section 80-IA." (See Notes 4 and 9 below table)
>
> Note 4 : Water treatment system includes system of desalinisation, demineralisation and purification of water.
>
> Note 9. Machinery and plant includes pipes needed for delivery from the source of supply of water to the plant and from the plant to the storage facility.

5. The assessing authority rejected the claim of the appellant on the premise that the appellant was only a contractor engaged for carrying out the works of "*cement lining*" and no infrastructure facility or development of infrastructure were carried out by them. Thus, it was concluded that the appellant does not fulfil the conditions stipulated under section 801A of the Act and therefore, was ineligible to claim the benefit of deduction.

6. Aggrieved by the order of the assessing officer, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals) who vide order dated 27.03.2007, held that the appellant is directly involved in the development of infrastructure facility and thus, entitled to the benefit u/s 80IA. The appellate authority also found that the appellant had acquired the machinery after 13.09.2002 and the machineries were used to do insitu lining of the pipes, thereby the requirement under the Act was satisfied and hence, they are entitled to the deduction under section 80IA of the Income Tax Act.

7. The Revenue carried the matter by way of an appeal before the Income Tax Appellate Tribunal, which reversed the order of the first appellate authority and restored the order of the assessing authority, on the finding that the appellant was only doing works contract of lining and thus, the benefit of

80IA cannot be extended to them. The findings of the Tribunal are usefully extracted hereunder:

> *"In the present case we find that the assessee was doing contract works of insitu cement lining for water supply project of the Gujarat Water Supply and Sewerage Board. As such the benefit of section 80IA cannot be extended to the assessee. The decisions relied upon by the assessee were rendered prior to the amendment and as such not relevant for deciding the issue. We, therefore, restore the order of the Assessing officer and reverse the order of the Commissioner(Appeals)."*

8. During the course of hearing, the learned counsel for the appellant submitted that they are not pressing their claim for deduction in terms of 80IA(4). The learned counsel would however, submit that the appellant is entitled to claim 100% deduction in terms of section 32 r/w Entry 7 Rule 5 of the Income Tax Rules of Appendix I, whereas, the assessing officer erred in granting depreciation only at 25% overlooking the said provisions of law.

9. The Tribunal while rejecting the claim of the appellant for deduction under section 80IA(4), has not examined the claim of depreciation at 100% in terms of Section 32 Read with Entry 7 Rule 5 to Appendix I. In view of the same, whether the appellant is entitled to depreciation at 100% as claimed by them, needs examination. Therefore, it is prayed by the learned counsel for the appellant that the matter may be remitted back for considering

the appellant's claim for depreciation at 100% under section 32 of the Income Tax Act read with Entry 7 Rule 5 to Appendix I. The learned counsel for the respondent also does not seriously object to the said prayer.

10. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, we are inclined to remit the matter back to the Tribunal for the limited purpose of examining the quantum of depreciation, which the appellant is entitled to. The order impugned herein is set aside for that extent alone. Accordingly, the Tax Case Appeal is disposed of. Consequently connected miscellaneous petition is closed. No costs.

[R.M.D. J.,] [M.S.Q. J.,]
13.12.2021

smn/rsh
Index: Yes/No
Internet: Yes/No

To
1.The Assistant Commissioner of Income-tax,
Company Circle II (3),
121, Nungambakkam high Road,
Chennai-600 034.

2.The Income Tax Appellate Tribunal, Chennai 'A' Bench

3.The Commissioner of Income Tax (Appeals)-III, Chennai

R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

smn/rsh

TCA No.1905 of 2008

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