IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.1011 of 2015

The Commissioner of Income Tax,
Chennai. ...Appellant

.vs.

M/s. Devi Polymers Private Ltd.,
TNK House, No.48, Anna Salai,
Chennai - 600 002.
PAN AAACD 1779 J ...Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 09.04.2014 in I.T.A.No.165/Mds/2014 for the Assessment Year 2007-2008 against the order of the Commissioner of Income Tax(A)(c)II, Chennai-34 in I.T.A No.404/13-14, PAN. No. AAACD3206C dated 28-10-2013 for the Assessment year 2007-2008 against the order of the Assistant Commissioner of Income Tax, Company Circle I(4) Chennai-34 dated 21-02-2011 in PAN.No AAACD3206C/2010-2011 for the Assessment year 2007-2008 against the order of the Assistant Commissioner of Income Tax, Company Circle I(4)Chennai dated 21-12-2009 in PAN.No AAACD1779J for the Assessment year 2007-2008.



For Appellant : Mr.T. Ravikumar
Senior Standing Counsel

For Respondent : Mr. R. Venkat Narayanan

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.165/Mds/2014 in respect of the Assessment Year 2007-2008 on the file of the Income Tax Appellate Tribunal, Chennai,"C" Bench, (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above appeal was admitted on the following substantial questions of law:

> " (i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is entitled or additional depreciation under section 32(1)(iia) on the plant and machinery purchased and used in earlier year?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the assets were put to use only for less than 180 days in the earlier year and hence, entitled to balance benefit in the subsequent year?"

3. Mr. R. Venkat Narayanan, learned counsel appearing for the respondent-assessee submitted that the questions of law involved in the present appeal were already decided by the the Hon'ble Division Bench of this court in Supreme Court in the Judgment reported in [2020] 119 taxmann.com 215 (Madras) [Commissioner of Income Tax, Chennai v. Aztec Auto (P.) Ltd] wherein the Hon'ble Division Bench held as follows:

> " 10. Be that as it may, the decision of the Tribunal in the case of Brakes India Ltd. v. Dy. CIT [T.C. A.No.551 of 2013, dated 14-3-2017], was appealed against before the Division Bench of this Court in and the Division Bench noted the decision in Rittal India Limited as well as M.M. Forgings and ultimately, allowed the appeal filed by the assessee. In doing so, the Division Bench of this Court distinguished the decision in the case of M.M. Forgings Ltd. (supra) by observing that the said case was not concerned with the issue with regard to right to carry forward the balance additional depreciation and followed the decision in the case of CIT v. Shri T.P. Textiles (P.) Ltd. [2017] 79 taxmann.com 411/246 Taxman 324/394 ITR 483 (Mad.),

which was decided in favour of the assessee and in which decision, the decision in the case of Rittal India (P.) Ltd.(supra), was also referred to.

11. The learned senior counsel for the revenue also pointed out that so far as the claim of balance 50% of the amount as in deduction was provided for inserting the proviso under section 32(1) and such insertion was with effect from 1-4-2016 by Finance Act, 2015.

12. In our considered view, the effect of the insertion of the proviso in the year 2016, may not have a bearing on the present issue, as during the relevant assessment year 2009-10, the law which has been settled by the Division Bench of this Court is the case of Brakes India Ltd. (supra), against the said decision, the revenue preferred an appeal before the Hon'ble Supreme Court in S.L.P. (C) No. 033755/2017 which was dismissed by an order dated 24-9-2018. Thus, the decision of the Division Bench in the case of Brakes India Ltd. (supra) having been approved by the Hon'ble Supreme Court, we are bound by the said decision and accordingly, following the same. ..."

4. On a reading of the above Judgment, it is clear that the Division Bench of this Court after taking into consideration the case of Brakes India Ltd. v. Dy. CIT [T.C. A.No.551 of 2013, dated 14.3.2017] and the case of CIT v. Shri T.P. Textiles (P.) Ltd. [2017] 79 taxmann.com 411/246 Taxman 324/394 ITR 483 (Mad.) decided the questions of law in favour of the assessee.

5. It is also brought to the notice of this court in the case of Brakes India Ltd., the Revenue preferred an appeal before the Hon'ble Supreme Court in S.L.P. (C) No. 033755/2017 and the Hon'ble Supreme Court also dismissed the Special Leave Petition by order dated 24.09.2018. Therefore, the decision of the Hon'ble Division Bench in the case of Brakes India Ltd. has become final.

6. In these circumstances, we are of the considered view that the ratio laid down by the Hon'ble Division Bench of this court in the Judgment reported in the Judgment reported in [2020] 119 taxmann.com 215(Madras)[cited supra]squarely applies to the facts and circumstances of the present case.

7. Following the ratio laid down in the Judgments reported in [2020] 119 taxmann.com 215 (Madras) [cited supra] the questions of law are decided against the Revenue and in favour of the respondent-assessee. The Tax Case Appeal is

liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
   Chennai, ''C'' Bench.

2. The Commissioner of Income Tax,
   Chennai.

3. The Commissioner of Income Tax(A)(C)-II
   Chennai - 34.

4. The Assistant Commissioner of Income Tax,
   Company Circle I(4), Chnnai - 34.

+1cc to Mr.T.Ravikumar, Senior Standing Counsel, S.R.No.19756/21

+1cc to M/s. Subbaraya Aiyar, Advocate, S.R.No.19733/21





SMI(CO)
RN(03/05/2021)