IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.07.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.Nos.154 & 155 of 2016

The Commissioner of Income Tax,
Chennai.

... Appellant
in both TCAs

vs.

M/s.Ennore Port Limited,
23, Rajaji Salai Chennai - 600 001.

.. Respondent
in both TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 29.11.2011 in ITA.Nos.1681 & 1682/Mds/2010 for the Assessment Years 2002-2003 & 2003-2004 against the order of the Commissioner of Income Tax(Appeals)-III, Chennai - 34 dated 30/07/2010 made in ITA.Nos.715 and 716/2008-2009/A-III from the Assessment year 2002-2003 and 2003-2004 respectively and against the Assessment passed by Deputy Commissioner of Income Tax Company Circle II(1) Chennai - 34 dated 01/12/2008 made in PAN.No.AAACE9013G from the Assessment year 2002-2003 and 2003-2004.

For Appellant in both TCAs : Mr. Karthik Ranganathan, Senior Standing Counsel

For Respondent in both TCAs : Mr. N.V.Balaji

COMMON JUDGMENT

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

We have heard Mr. Karthik Ranganathan, learned Senior Standing Counsel for the appellant/Revenue and N.V.Balaji, learned counsel for the respondent.

2. The appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the orders dated 29.11.2011 made in ITA.Nos.1681 & 1682/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench (for brevity, the Tribunal) for the Assessment Years 2002-2003 & 2003-2004.

3. The appeals were admitted on the following substantial questions of law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the depreciation on account of expenses incurred in connection with
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> setting up of break water in the port was allowable even though the same was not forming part of the block of assets in the schedule, which allows depreciation? And
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> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the depreciation on port creation charges is to be treated as plant and machinery and allowed the claim of the assessee at 25% or 10% as applicable to buildings?"

4. The learned Senior Standing Counsel appearing for the appellant submits that the above appeals are not pursued by the Revenue on account of the Low Tax Effect in terms of Circular No.17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in these cases are less than the threshold limit.

5. In the light of the said submissions, the above Tax Case Appeals are dismissed as withdrawn on account of the Low Tax Effect. The substantial questions of law framed are left open. In the event the tax effect in these cases is above the threshold limit fixed in the said Circular, liberty is granted

to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(L.A)

//True copy//

Sub Assistant Registrar

gv

To

1. The Registrar,
   The Income Tax Appellate Tribunal,
   Chennai,"B" Bench.

2. The Commissioner of Income Tax(Appeals)-III,
   Chennai - 34.

3. The Deputy Commissioner of Income Tax,
   Company Circle - II(1),
   Chennai - 34.

T.C.A.Nos.154 & 155 of 2016

KV(CO)
RLP(30/07/2021)