IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A.No.616 of 2016

Principal Commissioner of Income Tax-2,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

... Appellant

Vs.

Indian Bank
Corporate Office, Accounts Department,
No.254-260, Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.

... 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 22.01.2016 in I.T.A.No.1911/Mds/2015, Assessment Year 2008-09 preferred against the order passed by the Commissioner of Income Tax (Appeals)-6, Chennai dated 05.03.2015 made in ITA.Nos.41 & 42 / CIT(A) - 6 / 2014-15 preferred against the order passed by the Deputy Commissioner of Income Tax, Company Circle - II(2), Chennai dated 21.03.2014 for the Assessment Year 2008-09.

For Appellant : Mr.Karthik Ranganathan
Senior Standing Counsel

For Respondent : Ms.Sri Niranjani Srinivasan
for M/s.G.Baskar

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel for the appellant/Revenue and Ms.Sri Niranjani Srinivasan for M/s.G.Baskar, learned counsel for the respondent/assessee.

2.The appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity) is directed against the order dated 22.01.2016 made in I.T.A.No.1911/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench ("the Tribunal" for brevity) for the Assessment Year 2008-09.

3.The appellant/Revenue has raised the following substantial questions of law in this appeal :

> "1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in treating the Auto Teller Machines ATMs as computers which are eligible for depreciation at 60% under section 32 of the Income Tax Act?
>
> 2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in granting depreciation at the rate of 60% on UPS especially when the same is eligible for depreciation at 15% only as applicable to plant and machinery as per depreciation Table stated in Appendix-I provided in the Income Tax Rules?
>
> 3.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that higher rate of depreciation is to be allowed on UPS which is not an Integral part of the Computer but only a machine which stores power for the purpose of using such stored power cuts providing uninterrupted power supply and is energy storing device classifiable under Plant and Machinery only?
>
> 4.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in granting excess depreciation on UPS stating the same is part of the computer hardware?
>
> 5.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in dismissing the appeal of the Revenue on deduction u/s.36[1][viia] of the Act, when the relied upon decision in the case of Lakshmi Vilas Bank has been set aside to the file of Assessing Officer for fresh consideration?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is 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 this case is less than the threshold limit.

5.In the light of the said submissions, the above Tax Case Appeal is 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 this case 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 appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The Income Tax Appellate Tribunal,
   Chennai, “C” Bench.

2. The Principal Commissioner of Income Tax-2,
   No.121, Mahatma Gandhi Road,
   Chennai – 600 034.

3. The Deputy Commissioner of Income Tax,
   Company Circle II (2),
   Chennai – 34.

+1cc to M/s.G.Baskar, Advocate, S.R.No.42419

T.C.A.No.616 of 2016

LN[co]
NSK/18/05/2022