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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

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

Tax Case Appeal Nos. 648 to 650 of 2016

The Commissioner of Income Tax,
No. 121, Mahatma Gandhi Road,
Chennai - 600 034.
all TCAs

... Appellant in

v.

M/s. Hinduja Foundries Limited,
(formerly known as M/s. Ennore Foundries Ltd.),
Katthivakkam High Road, Ennore,
Chennai - 600 057
PAN : AAAS CE 1078 K .
in all TCAs

... Respondent

T.C.A. No. 648/2016 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 19.02.2016 in I.T.A.No.1591/Mds/2015 for the Assessment Year 2007-2008.

T.C.A. No. 649/2016 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 19.02.2016 in I.T.A.No.1592/Mds/2015 for the Assessment Year 2009-2010.

T.C.A. No. 650/2016 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 19.02.2016 in I.T.A.No.1593/Mds/2015 for the Assessment Year 2010-2011 against the order of the Commissioner of Income Tax(A)-6, Chennai-34 in ITA No.127, 128/CIT(A)/2011-12 & ITA No.171 & 172/CITA)-6/2013-2014 dated 13.02.2015 for the Assessment Year 2007-08, 2009-10 and 2010-11, against the Assessment order of the Deputy Commissioner of Income Tax, Company Circle II(I), Chennai, for the Assessment Year 2007-08, 2009-10 and 2010-11 dated 30/12/2011.



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

For Respondent : Mr.R.Venkat Narayanan
in all TCAs for M/s. Subbaraya Aiyar & Padmanabhan

COMMON JUDGMENT

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

Challenging the common order passed in I.T.A.Nos. 1591/Mds/2015, 1592/Mds/2015 and 1593/Mds/2015 in respect of the Assessment Years 2007-2008, 2009-2010 and 2010-2011 on the file of the Income Tax Appellate Tribunal, Chennai "A" Bench, (for brevity, the Tribunal), the Revenue has filed the above appeals.

2.1 The assessee is a limited company engaged in the business of Foundries. The Assessing Officer found that the assessee had claimed additional depreciation under section 32(1)(iia) of the Income Tax Act for the Assessment Years 2007-2008, 2009-2010 and 2010-2011 on the opening Written Down Value [WDV] on the plant and machinery purchased in the earlier years. The Assessing Officer further observed that the assessee had claimed the additional depreciation on the second half of the financial years 2005-06, 2007-08 and 2008-09 @ 10% on these plant and machineries and the remaining 10% in the subsequent financial years relevant to the assessment years in question. As the additional depreciation is allowable only in the year of purchasing the new plant and machinery, the Assessing Officer rejected the assessee's claim of additional depreciation on the brought forward opening WDV and added the same to the total income of the assessee.

2.2 Aggrieved over the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax dismissed the appeals. Challenging the same, the assessee preferred appeals before the Income Tax Appellate Tribunal, and the Tribunal, by its order dated 19.02.2016 allowed the appeals of the assessee. Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeals.

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

"(i) Whether on the facts and circumstances and in law, the ITAT was right in law in holding that additional depreciation can be allowed in the next year, in case, the same cannot be allowed in the earlier year?



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(ii) Whether on the facts and circumstances and in law, the ITAT was right in ignoring the jurisdictional High Court's decision in the case of M.M. Forgings Ltd (Reported in 349 ITR 673)?

(iii) Whether on the facts and circumstances and in law, the ITAT was right in ignoring the second provision of Section 32 (1), when there are no provisions in the statute to carry forward the balance additional depreciation to the following years?"

3. When the appeals are taken up for hearing, Mr. Karthik Ranganathan, learned Senior Standing Counsel appearing for the appellant, fairly submitted that the questions of law involved in the present appeals were already decided against the Revenue in the Judgment of the Hon'ble Division Bench of this Court dated 18.03.2020 in T.C.A. No 228 of 2011 [M/s. Comstar Automotive Technologies Private Ltd., Maraimalai Nagar, Chengalpattu District - v. The Deputy Commissioner of Income Tax Company Circle - I (3), Chennai], wherein the Hon'ble Division Bench held as follows:-

" 26. In the aforesaid Judgment, the reason for such conclusion arrived at by the Hon'ble Apex Court has been explained at para 17 in unequivocal terms. The Apex Court has specifically held that, at the stage of the aggregate of the incomes under other heads, the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be a premature for application. The deduction under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the Assessee from the gross total income. Ultimately, the issue has been settled with the following words of the Hon'ble Apex Court in the said decision "the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI."

27. Therefore the law has been settled by the said decision of the Hon'ble Apex Court, where in clear terms, it has been held that, the deductions either under Section 10A or 10B would be made while computing the gross total income of the eligible undertaking (like the Assessee) under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI of the Act.



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was first arrived at by the Revenue through the Assessing Officer in the Assessment Order by computing the total income by way of brought forward or carry forward the depreciation allowance of the earlier Assessment Years and set off the unabsorbed depreciation first and making the return Nil, thereby leaving the Assessee in a position where it could not claim any deduction under Section 10B as there was no income after set off of carry forward depreciation and unabsorbed depreciation from earlier years.

29. This method of computing the income in the present case made by the Revenue is totally against the said law as has been declared by the Hon'ble Apex Court in the aforesaid decision in Commissioner of Income-tax v. Yokogawa India Ltd., (cited supra).

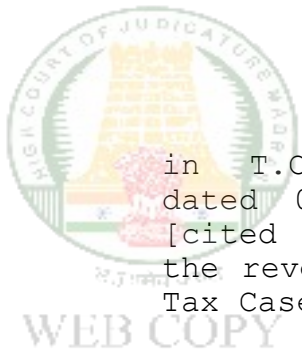
30. Therefore we have no hesitation to hold that, the decision of the ITAT, which is impugned herein, would not stand in the legal scrutiny, in view of the law having been declared by the Hon'ble Apex Court. Therefore, we are of the view that, the Substantial Question of Law raised in this Appeal is covered by the said decision, therefore it can be answered accordingly.

31. In the result, the Appeal is allowed and the Substantial Question of Law raised in this Appeal is answered in favour of the Assessee and against the Revenue. There shall be however no order as to costs. "

4. The learned Senior Standing Counsel appearing for the appellant further submitted that following the Judgment dated 18.03.2020 made in T.C.A. No 228 of 2011, the Division Bench of this Court already decided the questions of law against the Revenue by its Judgment dated 01.04.2021 made in T.C.A.Nos.1101 & 1102 of 2015 [The Commissioner of Income Tax, Chennai. v. M/s. Caterpillar India Pvt. Limited, Chennai] and dismissed the appeals.

5. Mr.R.Venkat Narayanan, learned counsel appearing for the respondent submitted that in view of the ratio laid down by the Hon'ble Division Bench of this court in T.C.A. No 228 of 2011 [cited supra] and the Judgment made in T.C.A.Nos.1101 & 1102 of 2015 [cited supra], cited supra, the questions of law may be decided against the revenue and the appeals may be dismissed.

6. In view of the submissions made by the learned counsel on either side, following the Judgment dated 18.03.2020 made



in T.C.A. No 228 of 2011 [cited supra] and the Judgement dated 01.04.2021 made in T.C.A.Nos.1101 & 1102 of 2015 [cited supra], the questions of law are decided against the revenue and in favour of the assessee. Accordingly, the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

Rj

To

1. The Registrar,
The Income Tax Appellate Tribunal,
Chennai "A" Bench
2. The Deputy Commissioner of Income Tax,
Company Circle II(I), Chennai.
3. The Commissioner of Income Tax(A)-6,
No.121, Mahatma Gandhi Road,
Nungambakka, Chennai-34.

+1cc to M/s. Subbaraya Aiyar, Advocate SR.No.32216

Tax Case Appeal Nos.648 to 650 of 2016

PPA(CO)
GMY(02/08/2021)