

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/49/2020
IA NO: GA/2/2020
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL – 1, KOLKATA
VS.
RAMKRISHNA FORGING LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 27th July, 2022

Appearance :
Mr. Tilak Mitra, Adv.,
....for appellant
Mr. S.M. Surana, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for respondent

The Court : This appeal filed by revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 13th February 2019 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in I.T.(SS).A. No. 09 (kol) of 2017 relating to the A.Y. 2010-2011..

The revenue has raised the following substantial questions of law for consideration :-

- (i) Whether on the facts and circumstances of the case, the provision for allowing additional depreciation of remaining 50% is allowable in the subsequent year i.e. Assessment Year 2010-11, although the statute allowed the same w.e.f. 01.04.2016 ?
- (ii) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal erred on facts by not appreciating the legal provisions that disallowance of the claim of the remaining additional

depreciation, pertaining to the machinery purchased in Financial Year 2008-2009, in Assessment Year 2010-2011 was rightly made and was as per the extant provisions of law ?

- (iii) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has erred on facts as well as in law in deleting the disallowance of 50% of additional depreciation claimed in Assessment year 2010-2011, ignoring the fact that the proviso for allowing the remaining 50% of allowable additional depreciation in the subsequent assessment year, came into the statute with effect from 01.04.2016 and thus, it was not there for assessment year 2010-2011 ?

We have heard Mr. Tilak Mitra, learned standing Counsel for appellant/revenue and Mr. S.M. Surana, learned Advocate duly assisted by Ms. Swapna Das, learned Advocate and Mr. Siddhartha Das, learned Advocate appearing for the respondent.

It is not disputed before us that the substantial questions of law raised in this appeal are covered by the decision in the case of *Dy. CIT v. Brakes India Ltd.* [IT Appeal No. 1069 (Mds.) of 2010, dated 6.1.2012]. The said decision was followed in the case of *Commissioner of Income Tax, Chennai Vs. Aztec Auto (P) Ltd.*; [2020] 119 taxmann.com 215(Madras). In the said decision it was held that where plant and machinery was acquired by the assessee in the second half of the financial year 2007-2008 was put to use for less than 180 days in that year and, therefore, only 10% of the additional depreciation under Section 32(1)(ia) could be allowed on same in that year, balance additional depreciation of 10% could be allowed on these assets in the relevant subsequent year 2009-10.

The operative portion of the decision reads as follows:-

7. The assessee preferred an appeal before the Commissioner of Income-tax [Appeals]-I CIT (A), Chennai, who by order dated 14-7-2016 allowed the appeal. In doing so, followed the decision of *Addison & Co. Ltd. v. Dy. CIT* [I.T. Appeal No.

2198 (Mds.) of 2015, dated 4-3-2016]. In this order, the Tribunal noted the decision in the case of *Dy. CIT v. Brakes India Ltd.* [I.T. Appeal No. 1069 (Mds.) of 2010, dated 6-1-2021], which was decided against the assessee. However, the CIT(A) took note of the decision above mentioned and observed that those were rendered after considering the decisions in *Brakes India Ltd. (supra)* and *CRI Pumps (P.) Ltd. v. Asstt. CIT* [2013] 34 taxmann.com 123/58 SOT 154 (Chennai - Trib.) and it was held that additional depreciation to the extent not claimed by the assessee in the earlier year ought to be allowed.

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. 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.

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.

Thus following the above decision the appeal filed by the revenue is dismissed and substantial questions of law are answered against the revenue.

Accordingly, GA/2/2020 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)