

OD-12

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

ITAT/70/2022
IA NO: GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VERSUS
M/S. NATIONAL ENGINEERING INDUSTRIAL LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 27th July, 2022

Appearance :-

Ms. Smita Das De, Adv.
... For Appellant
Mr. Asim Choudhury, Adv.
Mr. Soham Sen, Adv.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 16th December, 2021 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 2109/Kol/2019 for the financial year 2015-16.

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

"Whether on the facts and circumstances of the case the Learned Tribunal was justified in law in allowing the claim of balance additional depreciation on the assets which were put to use for less than 180 days in earlier years?"

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and M/s. Khaitan & Co., learned Advocates for the respondent.

It is not disputed before us that the question of law raised in this appeal is covered by the decision in the case of *Dy. CIT vs. Brakes India Ltd.*, I.T. Appeal No. 1069 (Mds.) of 2010, dated 6.1.2012, which judgment was upheld by the Hon'ble Supreme Court as the revenue's Special Leave Petition was dismissed by judgement dated 24th September, 2018. The said decision in *Brakes India Ltd.* was followed in the case of Commissioner of Income Tax, Chennai vs. Aztec Auto (P.) Ltd., (2020) 119 taxmann.com 215 (Madras). The operative portion of the said judgement 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 6-1-2012], 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. 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.

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.

For the above reasons, the appeal filed by the Revenue is dismissed and the substantial question of law is answered against the Revenue. No costs."

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

The stay application being IA No.GA/1/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)