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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.No.189 of 2012

M/s.Prasad Productions (P) Ltd.,
No.28, Arunachalam Road, Saligramam,
Chennai 93.

.. Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Media Circle-I,
Chennai.

.. Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 30.09.2005 in ITA No.994/Mds/2004 for the assessment year 1995-96 against the proceedings of the Commissioner of Income Tax, Chennai-IV, Chennai-600 034 made in C.No.1321 (02) / 2002-03/IV dated 09.03.2004 for the Assessment Year 1995-1996 against the proceedings of the Deputy Commissioner of Income Tax, Media Circle, Chennai-34 made in GI.No.10012-P dated 28.03.2002 against the proceedings of the Deputy Commissioner of Income Tax, Central Circle I(6), Chennai-34 made in PA/GI No.AAACP3614Q dated 29.03.2000 for the Assessment Year 1995-96.

For Appellant : Mr.R.Venkatanarayanan
for Mr.Subbaraya Aiyar

For Respondent : Mrs.V.Pushpa
Junior Standing Counsel

J U D G M E N T

(Judgment of the court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / assessee, challenging the order dated 30.09.2005 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in



I.T.A.No.994/Mds/2004 for the assessment year 1995-96.

2.By order dated 10.07.2012, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in not adjudicating on the preliminary issue of the validity of revision under Section 263 of the Income Tax Act when the Assessing Officer has granted deduction under Section 80 I of the Income Tax Act on the basis of the directions given by the Commissioner of Income Tax (Appeals)?

2.Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the losses incurred by the industrial undertaking in the earlier years, which was adjusted against the income of other units in the earlier assessment year has to be notionally carried forward and set off against the income of the current assessment year for the purpose of computing deduction under Section 80I of the Act?"

3.The learned counsel appearing for the appellant and the learned standing counsel for the respondent jointly submitted that the identical substantial questions of law were already raised and decided in favour of the appellant / assessee, by a Co-ordinate Bench of this court in TCA Nos.2035, 2036, 2037, 20329 & 2049 of 2008, by judgment dated 13.12.2018 in respect of the assessee's own case relating to subsequent assessment years. The relevant passage of the said judgment is profitably, extracted below:

"4.The above referred substantial questions of law were considered by a Division Bench of this Court in the assessee's own case for the earlier Assessment year in T.C.A.No.524 of 2008, dated 25.02.2015, in Prasad Productions Private Limited Vs. Deputy Commissioner of Income Tax, reported in (2015) 92 CCH 0098 ChenHC, and decided in favour of the assessee. The operative portion of the judgment reads as follows:

"8.The facts in the present case are also identical to the above said decision of this Court that all the business undertakings are wind mills and they have claimed the benefit of deduction under Section 80IA of the Income Tax Act for the Assessment years in question and for subsequent years as well.



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Having exercised their option and their losses have been set off already against other income of the business enterprise, the assessee in this appeal falls within the parameters of Section 80IA of the Income Tax Act. In the decision reported in (2012) 340 ITR 477 [Velayudhaswamy Spinning Mills Vs. Asst. Commissioner of Income Tax] there appears to be no distinction on facts.

9. Again in a batch of cases in T.C.(A) Nos.408 of 2012 by order dated 12.01.2015, this Court, following the decision reported in (2012) 340 ITR 477 [Velayudhaswamy Spinning Mills Vs. Asst. Commissioner of Income Tax] held in favour of the assessee and against the Revenue.

10. We, therefore, taking note of the decision rendered by this Court in the case of Velayudhaswamy Spinning Mills (supra) and in a batch of cases in T.C.A.Nos.408 of 2012, are inclined to allow this Tax Case (Appeal), thereby set aside the order passed by the Tribunal.

11. In view of the above, the question of law is answered in favour of the assessee and against the Revenue. This Tax Case (Appeal) stands allowed. No costs."

5. Following the above decision, these appeals, filed by the assessee, are allowed and the substantial questions of law are answered in favour of the assessee. No costs."

4. In the light of the aforesaid decision, which is squarely applicable to the facts of the present case, the substantial questions of law are answered in favour of the appellant / assessee and against the respondent / Revenue. Accordingly, the Tax case Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income Tax
Media Circle -1
Chennai.

2.The Income Tax Appellate Tribunal 'B' Bench,
Chennai

3.The Commissioner of Income Tax
Chennai-IV.

4.The Deputy Commissioner of Income Tax,
Central Circle I(6), Chennai-34.

5.The Section Officer,
VR Section,
High Court, Madras.

6.The Deputy Commissioner of Income Tax,
Media Circle, Chennai-34.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.11350

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.11837

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AK(CO)
SU(08/03/2022)