IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.No.195 of 2012

Shri.S.Srinivasaraghavan ...Appellant

Versus

The Assistant Commissioner of Income Tax,
Circle - III,
Trichy. ...Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal “C” Bench, Chennai in I.T.A.No.2116/Mds/2011 dated 30.03.2012, against the appellate order and ground of decision passed by the Commissioner of Income Tax (A) Tiruchirapalli 620 001, dated 24/10/2011 in ITA No.324/2010-11 for the Assessment year 2006-07 and against the Assessment Order passed by the Deputy Commissioner of Income Tax Circle III, Trichy dated 30/12/2010 in AADPR3292E for the Assessment Year 2006-2007.

For Appellant :Mr.S.Sridhar

For Respondent :Mr.M.Swaminathan,
Senior Standing Counsel
and
Mrs.V.Pushpa,
Junior Standing Counsel

JUDGMENT

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

The present Tax Case Appeal has been preferred by the appellant/assessee, against the order passed by the Income Tax Appellate Tribunal “C” Bench, Chennai in I.T.A.No.2116/Mds/2011 dated 30.03.2012.

2.For the assessment year 2006-07, the appellant/assessee filed his return of income on 31.10.2006, declaring the total income of Rs.3,30,35,780/-, which was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on, with regard to allowance of additional depreciation claimed on windmill, the assessment was reopened by issuing notice under Section 148 of the Act on 07.12.2009. After hearing the appellant and upon perusal of the materials, the assessing officer passed the assessment order on 30.12.2010, disallowing the claim for additional depreciation of Rs.60,59,600/- made by the appellant under section 32(1)(iia) of the Act. Challenging the order of assessment, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Tiruchirappalli / Appellate Authority. By order dated 24.10.2011, the said appeal was allowed by directing the assessing officer to re-compute the depreciation allowable, after duly allowing the claim made by the appellant for additional depreciation, in addition to the depreciation already allowed. Aggrieved against the same, the respondent/Revenue filed an appeal before the Income Tax Appellate Tribunal, which allowed the said appeal, vide order dated 30.03.2012, which is impugned in this tax case appeal.

3.On 03.07.2012, this court admitted the aforesaid appeal on the following substantial questions of law:

> "(i) Whether the Appellate Tribunal is correct in law in sustaining the disallowance of the claim of additional depreciation u/s.32(1)(iia) of the Act relating to the windmill installed even though the generation of electricity should be equated to the term "manufacturing or production of article or thing"?
>
> (ii) Whether the Tribunal is correct in law in sustaining the disallowance of the claim of additional depreciation u/s.32(1)(iia) of the Act relating to the windmill installed in spite of the fact of such claim was supported the decisions of this Court?"

4.Heard both sides and perused the records.

5.The short issue involved herein is with regard to the disallowance of additional depreciation of Rs.60,59,600/- under Section 32(1)(iia) of the Act on windmill.

6.Originally, the assessing officer allowed the claim of additional depreciation made by the appellant. But, the said claim was disallowed in the reassessment order dated 30.12.2010. On appeal by the appellant, the appellate authority allowed the said claim, following the decision of the Income Tax Appellate Tribunal's decision dated 12.12.2008 in ITA Nos.325 & 1763/Mds/2007, which was also affirmed by the High Court; and the Special Leave Petition preferred by the department has not been admitted. The findings of the appellate authority is quoted below for ready reference:

> "4. I have gone through the submissions filed by the appellant's Authorised Representative as well as the assessment order. For the purpose of claiming additional depreciation entitled for manufacture or production of new item u/s.32(1)(iia), the requirement is that it should be acquired or installed after 31.03.2002. The appellant acquired the wind mill after 31.03.2002 and claimed additional depreciation. As per the judicial pronouncement held in CIT Vs. VTM Limited (2010) 319 ITR 336 (Mad) it was not necessary that the machinery should become operational for the products already manufactured to claim the benefit of additional depreciation. Similarly, the claim of additional depreciation cannot be denied to the assessee that the purchase of wind mill did not relate to its existing business as stipulated in CIT Vs. Hi Tech Arai Ltd (2010) 321 ITR 477 (Mad.) and CIT Vs. Texmo Precision Castings (2010) 321 ITR (Mad) 481. As the Authorised Representative of the appellant has stated in his grounds of appeal that the department's appeal against the ITAT 'B' Bench order dated 12.12.2008 in ITA No.325 & 1793/Mds/2007 has upheld by the Hon'ble High Court and the special leave petition preferred by the department before the Supreme Court has also not been admitted in this regard. On verifying the facts of the case I found there is force in the argument of the appellant's Authorised Representative and the additional depreciation claimed by the appellant has to be allowed. The Assessing Officer is directed to re-compute the depreciation allowable after duly allowing the claim made by the appellant for additional depreciation in addition to the depreciation already allowed."

However, the Tribunal disallowed the said claim, on the premise that the appellant who is not engaged in the business of manufacture or production of any article or thing, is not entitled for additional depreciation as per the provisions of section 32(1)(iia) of the Act. Therefore, this appeal by the appellant / assessee.

7.It is to be pointed out by the learned counsel appearing for both sides that the issue involved herein is squarely covered by the judgment rendered by a co-ordinate bench of this court in the case of The Commissioner of Income Tax, Trichy Vs. M/s.Atlas Export Enterprise (Tax Case (Appeal) Nos.121 & 122 of 2015) dated 17.03.2015 and the relevant paragraphs of the said judgment is usefully extracted below:

> "5. In the decision reported in [2010] 321 ITR 477 (Mad) (COMMISSIONER OF INCOME-TAX v. HI TECH ARAI LTD.), this Court, while considering the scope and application of Section 32(1)(iia) of the Income Tax Act, held as follows:
>
> > "As far as application of section 32(1)(iia) of the Act is concerned, what is required to be satisfied in order to claim the additional depreciation is that the setting up of a new machinery or plant should have been acquired and installed after March 31, 2002 by an assessee, who was already engaged in the business of manufacture or production of any article or thing. The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed up to March 31, 2002, should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds, etc., is totally not germane to the specific provision contained in section 32(1)(iia) of the Act.
> >
> > 6. In such circumstances, we are not able to appreciate the contention of the learned standing counsel for the appellant on the ground that the order of the Commissioner of Income-tax (Appeals) as confirmed by the Tribunal should be interfered with. It cannot also be said that setting up of a wind mill will not fall within the expression setting up of a new machinery or plant. We do not find any error in the conclusion of the Tribunal in confirming the order of the

Commissioner of Income-tax (Appeals). We, therefore, do not find any question of law much less substantial question of law to entertain these appeals. These appeals fail and the same are dismissed. Consequently, M.P.No.1 of 2009 is also dismissed."

6. The facts in the present case are no different from the above said decision. In the present case, the core business of the assessee is manufacturing and export of textile goods. During the assessment year 2006-07, the assessee had entered into the business of generation of power and installed one wind mill. The assessee maintained separate books of accounts for export division and the wind mill division. Since the assessee has treated the windmill division as separate business, the claim of additional depreciation has to be seen in the context of generation of power through windmill only and the production of textiles and its export has nothing to do with the generation of power for the purpose of considering additional depreciation. Further as rightly held by the Tribunal, the Revenue has not brought in any new or contra material to differ from the view of this Court in the decision reported in [2010] 321 ITR 477 (Mad) (COMMISSIONER OF INCOME-TAX v. HI TECH ARAI LTD.)."

8.It is settled law that for the purpose of claiming additional depreciation for manufacture or production of new item under section 32(1)(iia), the basic requirement is that it should be acquired or installed after 31.03.2002. Admittedly, the appellant acquired the windmill after 31.03.2002. Taking note of the same and also in the light of the decision cited supra, this court is of the opinion that the appellate authority has correctly set aside the assessment order and remanded the matter to the assessing officer for fresh consideration. Whereas, the Tribunal erred in setting aside the said order of the appellate authority, by order dated 30.03.2012 and hence, the same is liable to be set aside and is accordingly, set aside. Consequently, the matter is remanded to the assessing officer to recompute the depreciation allowable after duly allowing the claim made by the appellant for additional depreciation, in addition to the depreciation already allowed. Such order be passed by the assessing officer, on merits and in accordance with law, after providing an opportunity of personal hearing to the appellant, within a period of six weeks from the date of receipt of a copy of this judgment.

9.This tax case appeal stands disposed of, in the above terms. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mrr
To

1.The Income Tax Appellate Tribunal "C" Bench,
Chennai.

2.The Deputy Commissioner of Income Tax,
Circle - III,
Trichy.

3.The Commissioner of Income Tax (Appeals)
Trichy.

+1cc to Mr.M.Swaminathan, Advocate SR.22617

T.C.A.No.195 of 2012

ev[co]
srg 28/04/2022