IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.No.886 of 2006
and
C.M.P.No.1557 of 2006

M/s. Madras Cements Ltd.,
98A, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004. .. Appellant

vs

The Deputy Commissioner of Income Tax,
Circle I, Special Range I,
Madurai. .. Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal 'C' Bench, dated 01.03.2006 in I.T.A.No.681/Mds/2005.

For Appellant : Mr.P.J.Rishikesh

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This Tax Case (Appeal) is for assessment year (AY) 1996-97 and has been filed by the Assessee (hereinafter referred to as 'Assessee'/'Appellant') raising the following substantial questions of law:

> *'1.Whether in facts and circumstances of the case, the Tribunal was justified in holding that there was sufficient evidence before CIT that the assessment order was erroneous and prejudicial for the interest of revenue under Section 263 of the Income Tax Act?*
>
> *2.Whether in facts and circumstances of the case, the Tribunal was justified in ignoring the earlier of its own order giving direction to A.O. giving 100% depreciation?*
>
> *3.Whether in facts and circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to 100% depreciation on the surface miner, cross belt analyzer which were used for solid waste control and solid waste recycling and resource recovery system as mentioned in appendix 1 (old), part A/(III)(2)(vi)?*
>
> *4.Whether in facts and circumstances of the case the CIT has jurisdiction to revise the order of A.O. dated 09.06.2003, when the A.O. has made a re-assessment revising the said order by power u/s.147 r.w.143(3) in terms of the order dated 29.03.2004?*
>
> *5.Whether in facts and circumstances of the case, the order of A.O. dated 09.06.2003 has not merged with the order of A.O. dated 29.03.2004 and consequently the order under Section 263*

revising the order dated 09.06.2003 is not bad in law and liable to be set aside?'

2. The trajectory that the matter has taken is set out as follows. A return of income had been filed under the provisions of the Income Tax Act, 1961 (in short 'Act'), wherein inter alia, the petitioner claimed deduction on scientific research under Section 35(1)(iv) of the Act.

3. Claims had been made in respect of four items (i) Surface miner - RR Nagar, Alathiyur project; (ii) GWS belt Analyser from Gamma Metros, USA – RR Nagar, Jayanthipuram; (iii) Magnetic separator – RR Nagar, Jayanthipuram and (iv) Cross Belt Analyser.

4. The assessment was completed by an order dated 31.03.1999 passed under Section 143(3) of the Act wherein the Assessing Authority rejects the claim for deduction for the reason that the Competent Authority had not issued the certificate as mandatorily required in terms of Section 35(1) of the Act. It is an admitted position that, at the time of assessment, the certificate from the Competent Authority had not been received by the assessee.

5. An alternate claim had been made for the grant of deprecation and the Assessing Authority, considering that the assets had been

procured only in the second half of the year had granted 12.5%, adopting the rate of 25%.

6. As against the assessment, an appeal was filed before the Commissioner of Income Tax (Appeals), who, by order dated 24.02.2000 concurred with the Assessing Authority that the deduction under Section 35(1)(iv) is not liable to be considered in the absence of a certificate from the Competent Authority. However, in anticipation of receipt of the certificate at a later point in time, the Assessing Authority was directed to revise his decision based on the decision of the Competent Authority, as and when received.

7. The assessee filed an appeal before the Income Tax Appellate Tribunal, which also, by order dated 26.12.2002 dismissed the appeal, noting the failure of the assessee to produce the requisite certificate from the Competent Authority.

8. Before the Tribunal, the assessee reiterated its claim for depreciation at the rate of 100%. The discussion of the Tribunal with regard to the alternate claim commences from paragraph 11 onwards. The Tribunal concludes that a direction on the aspect of the depreciation could be given by the Assessing Authority only when the plea in regard

to deduction under Section 35 was decided by the Competent Authority one way or the other.

9. In this connection, they refer to Section 35(3) which states *'If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question to the Prescribed authority, whose decision shall be final'*.

10. Since the plea for certification was still pending before the authority, the Tribunal concluded that it was only if the assessee/appellant disowned the claim for scientific research and development on these machineries, could the officer have considered the plea for 100% depreciation.

11. Consequence was given to the directions of the Tribunal, by way of an order passed on 09.06.2003. The Assessing Authority proceeds as though the Tribunal had, in its order dated 26.12.2002 issued a positive direction for grant of allowance of the assessee's claim for 100% depreciation. This is clearly an error, as the Tribunal had merely observed that the grant of depreciation was conditional on the fate of the claim under Section 35.

12. The relevant portion of the Tribunal's order is as follows:

> *'15.In view of the above submissions made by the learned authorised representative of the assessee that alternatively the claim of the assessee can be considered for depreciation as per the Schedule, we are of the view that if the assessee dis-owns the claim for scientific research and development on these machineries, the same be considered by the assessing officer for 100% depreciation or otherwise. According to law if the assessee completely disowns the first claim, only then the assessing officer will have the power to consider the issue on the basis of the other relevant provisions of the law. It is ordered accordingly.'*

13. Importantly, before the Tribunal, the Appellant had admittedly, not raised a ground claiming depreciation at the rate of 100% nor had it filed a petition seeking admission of evidence in support of such a claim. In fact, the admitted position is that no evidence has been furnished by the assessee to substantiate its claim for 100% depreciation. The Tribunal was hence right in remitting the issue to the Assessing Authority for examination.

14. Since the officer had proceeded as though the Tribunal had directed the grant of depreciation, there is, clearly an error in his understanding of that order, noticing which, the Commissioner of Income Tax (CIT) initiated proceedings for suo motu revision in terms of Section

263 of the Act. The proposal in the Show Cause Notice was for reversal of the 100% depreciation granted.

15. The defence of the assessee was that all material to substantiate the claim of 100% depreciation had been available before the Tribunal. An order came to be passed by the CIT on 11.02.2005 overruling the objections, and in our view, rightly so as it is not the case of the assessee before us that any material was produced at any stage of the proceedings, either Tribunal or assessment, to justify the claim of depreciation at 100%. The directions of the CIT in order dated 11.02.2005 are as below:

> *'I have examined the claim of the assessee and the advantages of cross belt analyzer. As seen during spot inspection these gamma rays sensor continuously analyses the composition and on the basis of system integration desirable grade of limestone and the proper mix for the same out of both high grade and low grade limestone is ensured. This is possible by adjusting automatically the hopper feed on the basis of analysis. But what is pertinent to note is that only chosen grades of limestone are mixed in desired proportions as fed from the storage hoppers. Thus it is only the proper and optimum mix that is ensured and not any resource recovery in its real sense. The materials stored in hopper could not be wasted but only mixed in appropriate ratios for effective and judicious utilization of available grades of limestone. Thus, the claim of rejection in the absence of cross belt analyzer is out of place and if at all, low grade limestone will be stored till a high grade limestone is mined to ensure the optimum mix for the preferred quality of the limestone pile (input). In other words, cross belt analyzer does not help in recovery*

through resource recycling or for solid waste control and recovery but only enables quality control of the produce through judicious mix of the available grades of cement grade limestone. As such it does not qualify to be a machinery eligible for 100% deprecation and accordingly the claim of the assessee is rejected. As the machinery was installed during the second half of the previous year only half of the normal depreciation is permissible and the Assessing Officer is directed accordingly. In view of the suggested modifications of carry forward loss from the assessment year 95-96 Assessing Officer should correctly determine the losses brought forward and the priority of set off and pass order modifying the order dated 09.06.2003 accordingly.'

16. Incidentally, the appellant had filed an application before the CCIT on 18.03.2003 seeking a direction to the assessing officer to grant depreciation at 100%. The CCIT, in order dated 26.05.2003, directed as follows:

'Now that the assessee's claim u/s 35(1)(iv) is turned down, the allowance of depreciation @ 100% on the above assets may be considered by the AO with due respect to the DSIR and ITAT orders.'

17. As against order dated 11.02.2005, an appeal was filed by the appellant before the Income Tax Appellate Tribunal challenging both the assumption of jurisdiction by the CIT under Section 263 of the Act as well as the direction.

18. The Tribunal has rightly concluded that in passing the consequential order dated 09.06.2003, the Assessing Authority has misunderstood the direction of the Tribunal and proceeded as though there had been a direction to 100% depreciation, contrary to its order. The appeal of the appellant has been dismissed and, in our view, there is no infirmity or illegality in such conclusion.

19. The CIT has gone in detail into the nature of the machineries as well as the fact that the machinery was deployed only in the second of the year, ultimately rejecting the plea for 100% depreciation, but allowing the plea for 50% of regular depreciation. Incidentally, the Competent Authority ultimately comes to reject the claim under Section 35 vide order dated 26.02.2001concluding as follows:

> *'I therefore hold the view that the expenditure claimed by the company on surface miners, magnetic separators and cross belt analyzers cannot be considered as R&D expenditure. However, these equipment have enabled the company to utilize raw material resources which could not have been otherwise utilized economically and would have been wasted or would have remained unutilized. Therefore, the income tax department may consider allowing 100% depreciation available for equipment installed for solid waste recycling and resource recovery systems as per Appendix – 1(Rule – 5).'*

20. We agree both with the conclusions of the CIT in order dated

11.02.2005 as well as in order of the Tribunal dated 01.03.2006.

21. Substantial questions of law (1) to (3) are decided against the appellant. No arguments have been addressed as regards questions (4) and (5) which are hence returned as unanswered. This Tax Case (Appeal) is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
14.11.2024

Index:Yes
Speaking order
Neutral Citation:Yes
vs

To

The Deputy Commissioner of Income Tax,
Circle I, Special Range I,
Madurai.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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