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T.C.A.No.455 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

Tax Case Appeal No.455 of 2015

M/s.Sabari Industries Ltd.,
37A, Laxmanampatti, Nallur P.O
Kulathur Taluk, Pudukkottai District 622 504. ... Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle I, Trichy. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench,
Chennai, dated 19.12.2014 made in I.T.A.No.1828/Mds/2013.

For Appellant : Mr.A.S.Sriraman
for M/s.S.Sridhar

For Respondent : Mr.S.Rajesh, Junior Standing Counsel
for Mr.J.Narayanaswamy
Senior Standing Counsel

J U D G M E N T

(Delivered by R.SURESH KUMAR, J.)

The substantial questions of law raised in this appeal have already been
considered by a Division Bench of this Court in T.C.A.No.551 of 2013 in the



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matter of **M/s.Brakes India Limited -vs- The Deputy Commissioner of Income Tax, Chennai** dated 14.03.2017.

2. The Division Bench in the said judgment, has passed the following order.

" 5.In order to appreciate the aforesaid submissions, the following facts are required to be noticed:

5.1.The Assessee had claimed additional depreciation under Section 32(1)(iia) amounting to Rs.1,89,67,159/- during the relevant assessment year, i.e., AY 2006-07.

5.2.The additional depreciation was claimed at the rate of 7.5% being 50% of the prescribed rate, which was 15%.

5.3.The depreciation was claimed at the said rate as the subject asset was used for less than 180 days.

5.4.The said depreciation was claimed in the preceding assessment year, i.e., AY 2005-06, which is, when the asset was installed and put to use.

5.5.In the relevant assessment year i.e., AY 2006-07, the Assessee sought to claim the balance depreciation equivalent to 7.5%. The Assessing Officer, however, rejected the claim made by the Assessee qua the balance additional depreciation.



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5.6. Being aggrieved, the Assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, CIT(A)]. The CIT(A) sustained the order of the Assessing Officer. The Tribunal, did likewise and therefore, the Assessee, is in appeal, before us.

6. As indicated right at the outset, the issue is covered in favour of the Assessee, by virtue of our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s. Shri T.P. Textiles Private Limited. As noticed above, the Karnataka High Court in CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has also taken the same view.

6.1. We are informed that the Revenue has not assailed the judgment of the Karnataka High Court.

6.2. In our judgment in the matter of Commissioner of Income Tax, Madurai Vs. M/s. Shri T.P. Textiles Private Limited, we have noticed the aforementioned judgment of the Karnataka High Court.

7. In so far as the first submission advanced by Mr. Ravi is concerned, according to us, the same is completely untenable.

7.1. The judgment of the Division Bench of this Court in M.M. Forgings Limited Vs. Additional Commissioner of Income Tax, did not deal the issue, which is at hand.

7.2. The issue, in hand, is as to whether balance additional depreciation could be carried forward to the year, following the previous year, in which, additional depreciation was claimed.



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7.3.The Division Bench in M.M.Forgings case the said case was not concerned with the issue, with which, we are faced, that is, the right to carry forward the balance additional depreciation. Therefore, the judgment is completely distinguishable.

8.The second submission of Mr.Ravi, that Circular no.8 of 2002 dated 27.08.2002 and Circular no.281 dated 29.11.1979, have not been taken note of, in our judgment rendered in Commissioner of Income Tax, Madurai Vs. M/s.Shri T.P.Textiles Private Limited, according to us, will not impact, either the reasoning or the conclusion reached by us, in the said matter.

8.1.It is pertinent to note that the Circular no.281 dated 29.11.1979, pre-dates the insertion of the relevant provision, i.e., second clause to Section 32 (1) (iia). The said clause (iia), admittedly, was inserted by virtue of the Finance (No.2) Act, 2002, with effect from 01.04.2003.

8.2.In so far as the second Circular is concerned, i.e, Circular no.8 of 2002 dated 27.08.2002, in our view, in no way, helps the case of the Revenue. The Circular does not dwell on the point which we are confronted with.

8.3.In any case, according to us, the Circulars are not binding on the Court, though, they may be binding on the Revenue. [See CIT V. Hero Cycles Pvt. Ltd., (1997) 228 ITR 463 (SC)].

9.The last submission that Mr.Ravi advanced, was, in fact, predicated on the reasoning given by the Assessing Officer, which, according to us, is misconceived, as the manner of calculation of



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depreciation, cannot, to our minds, impede the claim of the Assessee for balance additional depreciation, in the year following the previous year, in which, the said asset is installed and put to use.

10. Therefore, for the aforesaid reasons, we find no merit in the submissions advanced by the Revenue. "

3. The said order of the Division Bench has also been upheld by the Hon'ble Supreme Court in Commissioner of Income Tax, Chennai -vs- Aztec Auto (P) Ltd., [2020] 119 taxmann.com 215 (Madras) , which was also dismissed by the Supreme Court by order dated 24.09.2018.

4. When that being the position, the questions of law already being answered in favour of the assessee and against the revenue, the issue raised in this appeal is covered by the said decision, we are inclined to follow the same. Accordingly, this appeal is allowed in favour of the assessee and against the Revenue. No costs.

(R.S.K.,J.) (C.S.N.,J.)
13.08.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Income Tax Appellate Tribunal
'C' Bench, Chennai.

R.SURESH KUMAR, J.



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