In the High Court of Judicature at Madras

Dated: 06.03.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER
and
The Honourable Mr.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.157 of 2017

Commissioner of Income Tax
Madurai .... Appellant/Respondent

Vs.

M/s.Shri T.P.Textiles Private Limited
1021-A, Jothimahal Cotton Market,
Rajapalayam 626 117 .... Respondent /Appellant

APPEAL filed under Section 260A of the Income Tax Act, 1961 against the order dated 24.08.2016 made in I.T.A.No.1944/Mds/2015 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2011-12, against the order of the commissioner of Income Tax-I, Madurai, dated 30.03.2015 relavant to the assesment year 2011-2012 in PAN No.AACCS8824P.

For Appellant : Mr.M.Swaminathan
Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. This appeal is directed against the order of the Income Tax Appellate Tribunal (in short 'the Tribunal'), dated 24.08.2016, qua the Assessment Year (A.Y) 2011-12.

2. The Tribunal, by virtue of the impugned judgment, adjudicated upon two (2) appeals, vis-a-vis, two (2) separate orders of the Commissioner of Income Tax (in short 'CIT'), Madurai.

2.1. The first order dated 30.03.2015 pertains to A.Y.2011-12. This order was passed, under Section 263 of the Income Tax Act, 1961 (in short 'the Act').

2.2. The second appeal was preferred against the order of the Commissioner of Income Tax (Appeals) [in short 'the CIT(A)], dated 13.10.2015, for A.Y.2009-10.

3. The instant appeal has been preferred by the Revenue only against the order dated 30.03.2015.

4. The issue, which arose for consideration before the Tribunal, and which, emanated from the order dated 30.03.2015, was, as to whether, the claim, made by the Assessee, with respect to balance 10% of additional depreciation, under Section 32(1)(iia) of the Act, was sustainable.

5. In order to adjudicate upon the appeal, the following facts, need to be noticed:

5.1. The Assessee is engaged in the business of manufacture and sale of building products and textiles. The Assessee had filed a return of income qua A.Y.2011-12, on 23.09.2011, whereby, the total income, as declared, was stated as Rs.2,98,68,587/-. The Assessee's return was picked up for scrutiny, after which, an order, under Section 143(3) of the Act, was passed, on 27.02.2014.

5.2. The record shows that during the perusal of papers pertaining to A.Y.2011-2012, the Revenue formed a prima facie view that the assessment order dated 27.02.2014, passed qua the Assessee was both, erroneous and prejudicial to its interest.

5.3. Accordingly, a Show Cause Notice (in short SCN) notice dated 20.02.2015, was issued under Section 263 of the Act. By way of the said SCN, the Assessee was called upon to explain as to why it ought not to be disallowed the balance additional depreciation claimed at the rate of 10% for A.Y.2011-12, in respect of machinery purchased and used, albeit, for less than 180 days during the previous year 2009-10.

5.4. In response to the said SCN, the Assessee filed a reply dated 04.03.2015. It was, inter alia, indicated by the Assessee that, since, the issue raised was debatable, revisional power could not be exercised under Section 263 of the Act.

5.5. Furthermore, the Assessee also took the stand that a clarificatory amendment had been made in the Act, whereby, additional depreciation, which was restricted, in the year of use, as the use of the relevant plant and machinery was less than 180 days, could be claimed in the subsequent previous year.

5.6. Pursuant to the aforesaid exercise, the CIT came to the conclusion vide his order dated 30.03.2015, that the order dated 27.02.2014, passed under Section 143(3) of the Act, was, not only erroneous, but also prejudicial to the interest of the Revenue, inasmuch the issue raised in the SCN was not considered by the Assessing Officer. Consequently, the CIT proceeded to cancel the assessment order dated 27.02.2014, passed under Section 143(3) of the Act and directed the Assessing Officer to redo the assessment, in terms of directions issued by him, after giving due opportunity to the Assessee.

5.7. To be noted, the additional depreciation claimed by the Assessee, which was, a sum of Rs.8,03,233/-, and had been calculated at the rate of 10% - was, consequently, included in the total income of the Assessee.

6. Aggrieved by the same, the Assessee preferred an appeal before the Tribunal.

6.1. Therefore, the only issue, which arose for consideration before the Tribunal was, whether the additional depreciation, in the sum of Rs.8,03,233/-, could be claimed by the Assessee in the relevant assessment year, i.e., A.Y.2011-12, in respect of machinery, which was purchased and used for less than 180 days, in the previous year, 2009-10 (i.e., A.Y.2010-11).

7. The Tribunal, relying upon its own judgment in the case of Fresh & Honest Cafe Ltd. V. DCIT, dated 10.08.2016, passed in I.T.A.No.1373/Mds/2016 allowed the appeal of the Assessee.

7.1. Pertinently, in the judgment of the Tribunal, delivered in the case of Fresh & Honest Cafe Ltd. V. DCIT, reliance was placed on the judgment of the Karnataka High Court in the case of : CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka).

7.2. The issue, which arose for consideration before the Tribunal in the Fresh & Honest Cafe Ltd. V. DCIT, was also, whether the Assessee could be allowed balance additional depreciation in the relevant A.Y., following the A.Y., in which, the machinery had been purchased, and put to use, albeit, for a period of less than 180 days.

7.3. The Tribunal has, thus, in the context of the provisions of Section 263 of the Act, considered, as to whether the assessment order, as passed, qua the issue encapsulated above, erroneous and/or prejudicial to the interest of the Revenue.

7.4. In order to appreciate the issue at hand, relevant provisions of Section 32 of the Act, to the extent applicable in the A.Y. in issue, would be required to be noticed :

> "Section 32 (1) In respect of depreciation of -
>
> (i) buildings, machinery, plant or furniture, being tangible assets;
>
> (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed -
>
> (i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;
>
> (ii) in the case of any block of assets, such percentage on the written down value thereof as may

be prescribed:

Provided ....

(a)...

(b)....

Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) 1`or clause (iia), as the case may be:

Provided also ....

Provided also...

Provided also....

Provided also...

Explanation 1....

Explanation 2....

Explanation 3...

Explanation 4...

Explanation 5...

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of Marcy, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

Provided ......"

(Emphasis is ours)

8. Pertinently, the Karnataka High Court, in a decision rendered in the case of CIT V. Rittal India (P.) Ltd., [2016] 66 taxmann.com 4 (Karnataka), has interpreted the aforesaid provision, in particular, the proviso incorporated therein. The Karnatake High Court, in the said case, has come to the conclusion that additional depreciation granted under clause (iia) of Section 32(1) of the Act is for the purpose of affording benefits to the Assessees and, to encourage industrialization, either by setting up a new industrial unit, or, by expanding a new industrial unit, by purchasing and installing a new machinery, or, plant, and putting the same to use for the purposes of business.

8.1. The Court, went on to say, that while, the proviso appearing in Section 32(1) restricts the claim of depreciation to 50% of the amount calculated at the percentage prescribed for an asset referred to in clause (iia), nowhere does it restrict allowance of the balance 50% of the additional depreciation, which in percentage terms, would be 10% in the succeeding A.Y.

8.2. The relevant observations made by the Division Bench of the Karnataka High Court in the case of CIT V. Rittal India (P.) Ltd., as contained in paragraphs 7, 8 and 9 of the said judgment, for the sake of convenience are extracted hereafter :

> "..... 7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.
>
> 8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been down away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, if nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.
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> 9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which

shall be allowed....."

9. We are in respectful agreement with the view taken by the Division Bench of the Karnataka High Court, passed in CIT V. Rittal India (P.) Ltd.

10. According to us, these are provisions included by the Legislature in the Statute to give a fillip to new industries as also to existing industries, which seek to expand its sway, by investing in and making use of new plant and machinery.

10.1. The plain language of Section 32(1)(iia) read along with the relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10% of additional depreciation in the succeeding assessment year.

10.2. As a matter of fact, with effect from 01.04.2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

10.3. The amendment brought in the relevant proviso obtaining in Section 32, reads as follows:

> "..... 32. (1) ......
>
> Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia)for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset: ...."
>
> (Emphasis is ours)

11. We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum Explaining the provisions in Financial Bill, 2015", whereby, the aforementioned amendment was brought about.

11.1. The relevant part of the Memorandum is extracted hereafter:

> "..... To remove the discrimination in the matter of allowing additional depreciation on plant or

machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant and machinery, shall be allowed in the immediately succeeding previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2. A perusal of the extract of the Memorandum relied upon would show that the legislature recognised the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

11.3. In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The Memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4. We are, clearly, of the view that the Memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5. In any event, in so far as the Court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the Assessee could not claim balance depreciation in the A.Y., which follows the A.Y., in which, the machinery had been bought and used, albeit, for less than 180 days.

12. Thus, having regard to the foregoing discussion, we are of the view that no interference is called for with the impugned judgment of the Tribunal.

13. The appeal is, accordingly, dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax - I,
   Madurai.

+1cc to Mr.Swaminathan, Advocate, S.R.No.14609

GJII(CO)
RS(23/03/2017)

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