

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2015

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The Honourable Mr.Justice M.JAICHANDREN
and
The Honourable Mrs.Justice S.VIMALA

Tax Case (Appeal) No.1154 of 2015

Commissioner of Income Tax
No.63, Race Course Road
Coimbatore

... Appellant

-vs-

S.Martin
355-359, Daisy Plaza,
6th Street, Gandhipuram,
Coimbatore-641 012.

... 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 29.5.2015 in ITA No.2211/Mds/2014.

For appellant : Mr.T.R.Senthil Kumar

J U D G M E N T

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai, dated 29.5.2015, made in I.T.A.No.2211/Mds./2014.

2. The brief facts of the case, necessary for the disposal of the appeal, are as follows:

2.1) The assessee, the respondent herein, is an individual having an income from the sale of lottery tickets, money lending and by generating power through windmills. The assessee had filed the revised return of income, for the assessment year 2010-11, on 2.9.2011, declaring a total income of Rs.34,36,04,230/-. The assessee had claimed deduction of Rs.7,03,72,084/-, under Section 80IA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), on the income from the windmill division. The case of the assessee had been selected for scrutiny assessment and a notice, under Section 143(2) of the Act had been issued and served on the assessee.

2.2) The Assessing Officer had disallowed Rs.7,03,72,084/-, being the deduction claimed by the assessee, under Section 80IA of the Act, holding that the initial assessment year is the year from which the assessee commences its eligible business and as no profits were available for deduction in the financial year relevant to the assessment year 2010-11, after notionally bringing forward the unabsorbed depreciation and business loss.

2.3) The assessee had claimed 80IA deduction on the basis of the decision of this Court, in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368)*. Challenging the said order, the Revenue had filed a special leave petition, which had been admitted by the Supreme Court, in S.L.P.Civil No.33475 of 2012.

2.4) Aggrieved by the order passed by the assessing officer, the assessee had filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) had held that the issue is covered by the decision of this Court, in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368)*. As such, the claim of the assessee had been allowed. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue had filed an appeal before the Income Tax Appellate Tribunal "C" Bench, Chennai. The Tribunal, by its impugned order, dated 29.5.2015, had dismissed the appeal, following the decision of this Court, in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368)*.

3. Challenging the order of the Tribunal, dated 29.5.2015, the Department has filed the present appeal, before this Court, under Section 260A of the Act, raising the following substantial questions of law.

"1. Whether under the facts and circumstance of the case the Hon'ble Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled to deduction under Section 80IA without setting off the losses/unabsorbed depreciation pertaining to the windmill, which were set off in the earlier year against other business income of the assessee, following the decision of the jurisdiction High Court in the case of *M/s.Velayudhaswamy Spinning Mills (340 ITR 477)* when the same is pending appeal before the Hon'ble Supreme Court in S.L.P.Civil No.33475 of 2012?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the initial assessment year in Section 80IA(5) would only mean the year of claim of deduction under Section 80IA and not the year of commencement of eligible business?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee has the option to choose the first/initial assessment year of claim for deduction under Section 80-IA?

4. The learned counsel appearing on behalf of the Department had raised the following grounds, while challenging the impugned order of the Tribunal:-

"a. The order of the Income Tax Appellate Tribunal is erroneous in law and opposed to the facts and circumstances of the case.

b. The Income Tax Appellate Tribunal erred in holding that losses and unabsorbed depreciation which already stood set off against other income in earlier years could not be carried forward and set off against profits or income of initial/subsequent years in respect of windmill in computing the deduction under Section 80IA.

c. The Income Tax Appellate Tribunal erred in holding that the initial assessment year shall be first year in which the assessee opts to make the claim or the sixth year where the assessee had not opted in the earlier years. The Tribunal failed to appreciate that the year of commencement is to be considered as the initial assessment year for the purpose of determining the deduction under Section 80 IA.

d. The Income Tax Appellate Tribunal failed to appreciate the memorandum explaining the provisions in Finance (No 2) Bill 1980 (123 ITR (St.) 154 also explains that in computing quantum of tax holiday profits for the

unit is to be determined as if such units were an independent unit owned by the taxpayer.

e. The Income Tax Appellate Tribunal ought to have appreciated that as per provisions of Section 80IA (5) the undertaking eligible for deduction under Section 80IA should be treated as only source of income for computing the quantum of deduction.

f. The Income Tax Appellate Tribunal erred in following the decision of Jurisdictional High Court in the case of M/s.Vellayuthasamy Spinning Mills when the same is appeal before the Hon'ble Supreme Court.

g. The Income Tax Appellate Tribunal should have observed that since sub Section 5 of Section 80IA starts with a non-obstante clause, the restriction put in sub-section 5 will prevail and deduction under 80IA has to be restricted accordingly.

h. The Income Tax Appellate Tribunal ought to have appreciated that as per provisions of Section 80IA (5) the undertaking eligible for deduction should be treated as only source of income for computing the quantum of deduction.”

5. We have heard the learned the counsel appearing on behalf of the appellant. We have also perused the records available before this Court.

6. It is noted that the facts and circumstances based on which the present appeal had arisen are similar to those which had already been decided by this court. Further, in a batch of cases, in *CIT Vs. Eastman Exports Global Clothing (P) Ltd.* [2015] 229 Taxman 449/54 Taxmann.com 408 (Madras), this Court had followed the decision rendered in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368)*, and had decided the matter in favour of the assessee and against the Revenue. Taking note of the above said decisions, we are constrained to dismiss the present appeal filed by the Revenue, confirming the order passed by the Tribunal, dated 29.5.2015. Accordingly, the questions of law raised in the appeal are answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed.

(M.J.,J) (S.V.,J)
14.12.2015

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INDEX : YES
INTERNET : YES

**M.JAICHANDREN, J.
and
S.VIMALA, J.**

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To

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

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