IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3-11-2015

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case Appeal No.1082 of 2015

Commissioner of Income Tax IV
No.121, Mahatma Gandhi Road,
Chennai-600 034. .. Appellant.

Versus

M/s.Karmen International Pvt. Ltd.
DP No.48 & 51, SIDCO Industrial Estate,
Thirumazhisai, Chennai-602 107. .. Respondent.

Prayer: Appeal presented to the High Court against the order of the Income Tax Appellate Tribunal Madras `B' Bench, dated 29.5.2015, in ITANo.64/Mds/2015.

For Appellant : Mr.T.R.Senthil Kumar

For Respondent : Mr.A.S.Sriraman

O R D E R

This Appeal has been filed against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 29.5.2015, made in I.T.A.No.64/Mds/2015.

2. It has been stated that the assessee, the respondent herein, is a company engaged in the manufacture of machined castings, mainly for the purpose of export of such items and it is also engaged in the generation of power, through wind mills. The assessee had filed its return of income, for the assessment year 2010-2011, on 15.10.2010, declaring a total income of Rs.6,98,67,820/-. The assessee had claimed deduction of Rs.41,87,999/-, under Section 80IA of the Income Tax Act, 1961, on the income got from the wind energy division. The case of the assessee had been selected for scrutiny assessment and a notice under Section 143(2) had been issued and served on the assessee.

3. It had been further stated that the assessing officer had disallowed Rs.41,87,999/-, being the deduction, under Section 80IA of the Income Tax Act, 1961, claimed by the assessee, holding that the initial assessment year is 2006-2007, the year from which the assessee had commenced its business. It had been held that no profits were available for deduction in the financial year relevant to the assessment year, 2010-2011, after notionally bringing forward the unabsorbed depreciation and business losses.

4. Aggrieved by the order of 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 raised in the said appeal is covered by the decision of the High Court of Madras, in

Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, [2012] 21 taxmann.com 95 (Mad.). In view of the said decision, the claim of the assessee had been allowed. The appeal filed by the Revenue, before the Income Tax Appellant Tribunal, challenging the order of the Commissioner of Income Tax (Appeals), had been dismissed. Challenging the order of the Tribunal, dated 29.5.2015, the Revenue has filed the present Appeal, before this Court, under Section 260A of the Income Tax Act, 1961, raising the following substantial questions of law.

> "1. Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that the assessee is entitled to claim deduction under section 80IA of the Income Tax Act?
>
> 2. Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that initial assessment year in Section 80IA(5) would only mean the year of claim and not the year of commencement?
>
> 3. Whether, on the facts and in the circumstances of the case, the ITAT is right in law in holding that the brought forward business losses and unabsorbed depreciation of the earlier years which had already been absorbed cannot be notionally carried forward and taken into consideration for computing deduction under Section 80IA of the Act?"

5. The appellant had stated that the Income Tax Appellate Tribunal had erred in holding that the losses and unabsorbed depreciation, which had been set off, already, against other income, during the earlier years, could

not be carried forward and set off against profits or the income of the initial/subsequent years, in respect of the wind mill in question, in computing the deduction, under Section 80IA of the Income Tax Act, 1961.

6. It had also been stated that the Tribunal had erred in holding that the initial assessment year shall be the first year in which the assessee opts to make the claim or the sixth year when the assessee had not opted during the earlier years. The Tribunal had 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 80IA of the Act. Further, the Tribunal had failed to appreciate the explanation in the memorandum, in Finance [No.2] Bill 1980 [123 ITR (St.) 154], which explains that the quantum of tax holiday profits for the unit is to be determined as if such units were independent units owned by the tax payer.

7. It has been further stated that, as per the provisions of Section 80IA(5) of the Income Tax Act, 1961, the undertaking eligible for deduction under the said Section should be treated as the only source of income for computing the quantum of deduction. It has been further stated that the Tribunal should have observed the fact that a restriction has been incorporated in sub-section 5 of Section 80IA, as it starts with a *non-obstante* clause and the same would prevail and the deduction under Section 80IA has to be restricted accordingly.

8. It has also been stated that the decision made by this court, in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, [2012] 21 taxmann.com 95 (Mad.),* has been challenged before the Supreme Court of India and the matter is pending disposal. While so, the Tribunal ought not to have followed the decision of this court, made in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, [2012] 21 taxmann.com 95 (Mad.).*

9. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the decision rendered in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, [2012] 21 taxmann.com 95 (Mad.),* squarely applies to the facts of the present case. He had further submitted that a Division Bench of this court had rendered a similar decision, in *Commissioner of Income-Tax, Circle-I, Tirupur Vs. R.Yuvaraj, [2015] 57 Taxmann.com 252 (Madras).* In view of the above decisions, the appeal filed by the Revenue is liable to be dismissed, as it is devoid of merits.

10. We have heard the learned the counsels appearing on behalf of the appellant, as well as the respondent. We have also perused the records available before this Court.

11. 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 in the cases cited supra. 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.,)

Index:Yes/No 3-11-2015
Internet:Yes/No
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To

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No.121, Mahatma Gandhi Road,
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M.JAICHANDREN,J.
AND
S.VIMALA,J.

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