

In the High Court of Judicature at Madras

Dated : 29.9.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

T.C.A.Nos.741 to 743 of 2015 and M.P.Nos.1 & 1 of 2015

The Commissioner of Income Tax,
Central IV, Chennai-34.

...Appellant in
all the appeals

Vs

M/s.SAS Hotels & Enterprises Ltd.,
Chennai-17.

...Respondent in
all the appeals

TAX CASE APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 30.5.2011 made respectively in I.T.A.Nos. 477 to 479/(Mds)/2011 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai, for the assessment years 2003-04, 2004-05 and 2005-06.

For Appellant : Mr.T.R.Senthil Kumar

Common Judgment

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These appeals are filed by the Revenue under Section 260-A of the Income Tax Act, 1961 raising the following substantial questions of law :

"(i) Whether the Appellate Tribunal was correct in following the earlier order of the Tribunal

in assessee's own case without verifying the nature of issue therein?

(ii) Whether the Tribunal is correct in observing that this Court has not so far delivered any judgment against the order of the Tribunal in I.T.A.No.2176/Mds/2008 without considering the reported decision in (2011) 16 Taxmann.com 34 of the very same assessee ? and

(iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal is 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 ?"

2. Though on the questions 1 and 2, the appellant/Revenue is entitled to have our answers in their favour, we did not think fit to admit the appeal and order notice, in view of the fact that in any case, the third question of law has to be answered against the appellant/Revenue, which would eventually lead to the dismissal of the appeal. Therefore, without ordering notice of admission, we have taken up the appeal.

3. In so far as the questions 1 and 2 are concerned, the same relates to a finding recorded by the Tribunal as though the issue on hand was covered by the decision of the Tribunal in I.T.A.No.2176/Mds/2008. But, the decision of the Tribunal in I.T.A.No.2176/Mds/2008 related to the method of accounting. The appeal filed by the Department was already disposed of in

favour of the same assessee in 2011 (16) Taxmann.com 34. The case on hand has nothing to do with the decision rendered in I.T.A.No.2176/Mds/2008. Therefore, the finding of the Tribunal in relation to this aspect is clearly erroneous and the questions 1 and 2 are liable to be answered in favour of the appellant.

4. However, on question No.3, we have already held in ***C.I.T. Vs. Yuvaraj [T.C.A.No.163 of 2015 dated 21.4.2015]***, following the decision of this Court in ***Velayudhaswamy Spinning Mills Vs Asst. CIT [2012] 340 ITR 477*** that the Tribunal was right in holding that the assessee is entitled to deduction under Section 80IA without setting off the losses/unabsorbed depreciation pertaining to the windmill. The decision in *Velayudhaswamy Spinning Mills* followed the decision of the Supreme Court in ***Liberty India Vs CIT [2009] 317 ITR 218 (SC)***.

5. Though we are inclined to answer questions 1 and 2 in favour of the appellant/Revenue, the appeal is dismissed in view of the fact that the same result would follow on account of our answer to the question No.3. Consequently, the above MPs are also dismissed.

29.9.2015

Internet : Yes

To

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

RS

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J
RS

T.C.A.Nos.741 to 743 of 2015
and M.P.Nos.1 and 1 of 2015

29.9.2015