

In the High Court of Judicature at Madras

Dated: 27.10.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) No.559 of 2014

Commissioner of Income Tax,
Coimbatore.

.... Appellant

Vs.

M/s.ABT Ltd.,
C/o M/s.Subbaraya Aiyar Padmanabhan
& Ramamani, Advocates,
75A, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

....

Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 03.01.2013 made in I.T.A.No.1633/Mds/2011 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai.

For Appellant : Mr.T.R.Senthilkumar
Standing counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that, the assessee has satisfied the requirement

of second proviso to Rule 5(1A) of the Income Tax Rules, and they are entitled for depreciation on windmills as per Appendix I is valid?

ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the proviso to section 32(1)(i) and Rule 5(1A) clearly stipulate that only rate of depreciation on the method as provided for in Appendix I A will be relevant for power generating Machinery?

iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in granting depreciation at 80% on windmills, even though the assessee is entitled at the rate of 7.69% of the cost and this rate has correctly been allowed by the assessing officer?

iv) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled for higher rate of depreciation even though the assessee had filed return of income within the due date and has also not exercised its option separately?

v) Whether based on the material available before the Income Tax Appellate Tribunal, it could have come to the conclusion that the assessee has explained the credits to the satisfaction of the assessing officer and therefore the addition under Section 68 is not warranted?"

2. The issue involved in this Tax Case (Appeal) is two-fold. The first issue relates to the claim of depreciation by the assessee on the installation of windmill, which according to the Revenue is contrary to Rule 5(1A) Appendix 1A of the Income Tax Rules.

3. Learned Standing counsel appearing for the Revenue submits that the above-said issue is covered by a decision of this Court dated 09.09.2014 made in T.C.(A)Nos.330 of 2013 etc. batch.

4. In the above-said decision, this Court, following the decision of the Bombay High Court reported in **229 ITR 772 (CIT V. Vijaya Hirasa Kalamkar (HUF)**, held as follows:

"20. A reading of the above-said decision of the Bombay High Court makes it clear that if the assessee exercised the option in terms of second proviso to Rule 5(1A) of the Income Tax Rules at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to exercise of option is required. Since the returns are filed in accordance with Section 139(1) of the Income Tax Act and the form prescribed therein make a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required, as contended by the Department. We are in agreement with the reasoning of the Tribunal.

21. Accordingly, the question of law is answered in

favour of the assessee and against the Revenue."

5. Following the above-said decision of this Court, substantial questions of law Nos.1 to 4 are answered in favour of the assessee and against the Revenue.

6. The second issue relates to additions made under Section 68 of the Income Tax Act on account of unexplained cash credit. The assessee is a company engaged in the business of parcel service, Maruti dealership and service station, petrol bunk, wind energy and fettling. For the assessment years 2005-06 and 2006-07, the assessee claimed the expenditure incurred towards construction/renovation of building on leased premises as revenue expenditure. The Assessing Officer disallowed the same, but allowed 10% depreciation. Apart from that, the Assessing Officer made additions towards unexplained fixed deposits under Section 68 of the Income Tax Act. On appeal, the Commissioner of Income Tax (Appeals), after analysing the documents filed by the assessee, allowed the appeal filed by the assessee, which was confirmed by the Income Tax Appellate Tribunal.

7. The Tribunal, after perusing the order of the Commissioner of Income Tax (Appeals) agreed with the contention of the assessee and held in favour of the assessee. For better clarity, the relevant portion of the order of the Tribunal reads as follows:

"16. The second ground of appeal of the Revenue is with regard to addition made under section 69 of the Act on account of unexplained cash credit. A perusal of para 13 of the order of the CIT(A) shows that during the course of appellate proceedings, the assessee was able to produce documents and the details of repayment made through cheque. Even the bank confirmations were filed by the assessee before the CIT(A) showing that the cheques issued by the assessee were encashed by the respective parties. The assessee had also furnished identity of persons with complete details of addresses and the FD applications showing details. After satisfying himself with the documents, the CIT(A) has allowed the ground of appeal of the assessee. The DR could not controvert the findings of the CIT(A) on this issue. We, therefore, do not see any reason to interfere with the findings of the CIT(A) on this issue. No other issue has been raised in this appeal of the Revenue. Since both the issues are decided against the Revenue, the appeal of the Revenue for the assessment year 2008-09 is dismissed being devoid of merit."

8. We have perused the order of the Commissioner of Income Tax (Appeals) and that of the Income Tax Appellate Tribunal. On facts, it is evident that the Commissioner of Income Tax (Appeals) has gone into every details of payments and held in favour of the assessee. On the basis of documents and details, which were supported by records, the identity of the persons, who have entered into the transaction, has also been verified and found to be correct.

**R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.**

9. Being pure question of fact, we do not find any reason to interfere with the order of the Tribunal. We find no merit in this Tax Case (Appeal). Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Index :Yes/No
Internet:Yes/No
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(R.S.,J) (R.K.,J)
27.10.2014

To

1. The Income Tax Appellate Tribunal 'B' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-I, Coimbatore.
3. The Deputy Commissioner of Income-tax, Company Circle-I(2), Coimbatore.

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