

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 03.09.2012  
CORAM  
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN  
AND  
THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU  
TAX CASE Appeal Nos. 422, 424, 2455 & 2538 of 2006  
Tax Case Appeal Nos. 422 & 424 of 2006

AREVA T & D India Limited,  
New No. 457, Anna Salai,  
Teynampet, Chennai 600 018.  
(Cause title accepted vide  
order of Court dated 23.02.2006  
in TCMP Nos.608 to 610 of  
2006)

..Appellant

Vs.

The Joint Commissioner of Income Tax  
Special Range II,  
121, Nungambakkam High Road,  
Chennai 600 034.

..Respondent

Prayer: Appeals against the common order dated 29.07.2005 passed by the Income Tax  
Appellate Tribunal Bench "A" Chennai in I.T.A. Nos. 1749/Mds/2000 & 1748/Mds/2000  
respectively relating to the assessment years 1996-1997 & 1995-1996 respectively.

Tax Case Appeal No. 2455 of 2006

AREVA T & D India Limited,  
New No. 457, Anna Salai,  
Teynampet, Chennai 600 018.  
(Cause title accepted vide  
order of Court dated 28.08.2006  
and made in M.P.1/2006 in  
TCSR No.s63133 & 63136/2006)

..Appellant

Vs.

The Deputy Commissioner of Income Tax,  
Company Circle I (1),

121, Nungambakkam High Road,  
Chennai 600 034.

..Respondent

Prayer: Appeal against the order dated 06.02.2006 passed by the Income Tax Appellate Tribunal, Bench "A" Chennai in I.T.A. No. 2032/Mds/2002 relating to the assessment year 1998-1999.

Tax Case Appeal No. 2538 of 2006

AREVA T & D India Limited,

New No. 457, Anna Salai,

Teynampet, Chennai 600 018.

(Cause title accepted vide  
order of Court dated 26.09.2006  
and made in M.P.1+1/2006 in  
TCSR 73966 & 73969/2006)

..Appellant

Vs.

The Joint Commissioner of Income Tax  
Special Range II,  
121, Nungambakkam High Road,  
Chennai 600 034.

..Respondent

Prayer: Appeal against the order dated 07.06.2006 passed by the Income Tax Appellate Tribunal, Bench "A" Chennai in I.T.A. No.426/Mds/2001 relating to the assessment year 1997-1998.

For Appellant :: Mr.M.P. Senthilkumar

For Respondent

in all the appeals :: Mr.T. Ravikumar,  
Standing Counsel (IT)

## J U D G M E N T

(Judgment of the Court was delivered by Chitra Venkataraman,J.)

The assessee has filed the above appeals as against the orders of the Income Tax Appellate Tribunal relating to the assessment years 1995-1996, 1996-1997, 1997-1998 and 1998-1999.

2. The substantial question of law raised in appeal Nos. 422 & 424 of 2006 and the first substantial question of law raised in appeal Nos.2455 & 2538 of 2006 are common and it reads as under:

"Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the appellant is not entitled to claim higher rate of depreciation at 40% on the moulds and moulding tools for the manufacture of plastic goods as provided under item III of Machinery and Plant (2)(iii) of Appendix-I and Rule 5 of the Income Tax Rules, 1962?"

It may be noted that in addition to the question of law referred to above, there is yet another substantial question of law raised in T.C.A. Nos. 2455 & 2538 of 2006 relating to the assessment years 1998-1999 and 1997-1998 respectively and it reads as under:

"Whether on the facts and circumstances of the case the Appellate Tribunal was right in law in allowing the Department appeal on the disallowance of higher rate of depreciation on plastic moulds against which the department has not preferred appeals to the ITAT for the earlier assessment years namely 1991-92 to 1993-94?"

3. Appendix-I under Rule 5 of the Income Tax Rules, 1962 lays down the different percentages of depreciation allowed on various block of assets. Item III relates to depreciation referable to Machinery and Plant and sub-item 2(iii) of Item III of the said Appendix relates to Moulds used in rubber and plastic goods factories specifying the rate of depreciation as 40%. The assessee herein is engaged in the manufacture of relay switches, switch gears, electrical equipments used in power generation, transmission and distribution. The assessee is stated to be having an independent unit at Pondicherry relating to manufacture of plastic covers, seals, shrouds, etc. In respect of the moulds and moulding tools used therein, the assessee claimed depreciation @ 40% as provided for under sub-item 2(iii) of Item III of Appendix I of the Income Tax Rules, 1962. The claim of the assessee was, however, rejected by the Assessing Officer. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Appeals. Following an earlier order, the Commissioner of Income Tax (Appeals) directed the Assessing Officer to grant the relief of depreciation on plastic moulds @ 40%. Aggrieved by this, the Revenue went on appeal before the Tribunal and the Tribunal pointed out that the assessee had not produced any material to show that it had a separate unit to manufacture plastic parts when it is admittedly engaged in the manufacture of heavy electricals and parts and not engaged in the manufacture of rubber or plastic goods and held that the assessee was not entitled to the relief of depreciation @ 40%. In holding so, the Tribunal applied the decision of this Court reported in 123 ITR 427 (Mad.) (Commissioner of Income Tax, Tamil Nadu V. Falcon Wires Private Limited). Aggrieved by this, the assessee is before this Court.

4. Learned counsel appearing for the assessee pointed out that immediately on the dismissal of the assessee's claim, the assessee had filed M.P. Nos. 256 to 258/Mds/2005 before the Income Tax Appellate Tribunal submitting the evidence on the setting up of a separate unit to manufacture plastic parts. The Tribunal, however, rejected the MPs on the ground that no material was given at the time of hearing by the assessee as regards this evidence and therefore, there was no omission on the part of the Tribunal to consider the findings made by CIT(A) in assessment years 1991-1992 and 1992-1993. It is a matter of record that in respect of the very same claim, in the orders passed by CIT (Appeals) on 7.11.1996 and 31.07.2000, the Commissioner of Income Tax (Appeals) allowed the claim of depreciation @ 40% on the moulds used in rubber and plastic goods. The Commissioner of Income Tax (Appeals) pointed out that though the assessee did not have a rubber or plastic goods factory exclusively, it had a unit wherein moulds and moulding tools for manufacturing plastic covers, seals, shrouds were installed and such plastic covers, seals, etc. manufactured were finally utilised in the manufacture of products dealt with by the assessee. He also pointed out that installation of the moulds and moulding tools in the factory of the appellant was never in

dispute. Thus, going by the materials available, the Commissioner allowed the claim. As far as the order relating to the assessment years 1991-92 and 1992-93 is concerned, even though it is dated 07.11.1996, it is a matter of record that the Revenue had not gone on appeal before the Income Tax Appellate Tribunal as against this order of the Commissioner. It is also a matter of record that the assessee did not file any tax case as against the order of the Tribunal dismissing M.P. Nos. 256 to 258/Mds/2005.

5. Leaving that aspect aside, learned counsel for the assessee pointed out that when the unit manufacturing plastic goods located at Pondicherry is a separate unit and the assessee had also made necessary application for recognition of its unit before the Department of Industrial Development, Ministry of Industry, Government of India and the Annual Report and Accounts for the year ending 31.03.1992 referred to the separate unit at Pondicherry manufacturing switches of plastics, switches of other materials, plugs and sockets of plastics and plugs and sockets of other materials, it is not correct on the part of the Tribunal to have rejected the claim of the assessee for depreciation @ 40%. In this connection, the learned counsel placed reliance on the judgment reported in 203 ITR 614 (Commissioner of Income Tax V. Amco Batteries Ltd) wherein the Karnataka High Court held that even though the assessee therein was a manufacturer of batteries, it had got a separate division in its factory for making rubber containers, which were used for making batteries and which were not sold in the market. In the context of the facts of that case, it was held that the assessee was entitled to higher rate of depreciation on the moulds used for making rubber containers, which were ultimately used in the manufacture of batteries. In the light of the said decision, the learned counsel for the appellant submitted that the order of the Tribunal has to be set aside.

6. Per contra, learned Standing Counsel appearing for the Revenue, however, supported the order of the Tribunal, particularly in reference to the factual finding that the assessee had not placed any material to show that it had a separate unit at Pondicherry for manufacturing plastic items so as to be entitled to claim depreciation @ 40% on the moulds used therein. In this connection, learned counsel placed reliance on the decision of this Court reported in 123 ITR 427 (Mad) (cited supra) and submitted that though the entry has to be reasonably construed, yet, if the industry does not fall within the entry, then the claim for depreciation @ 40% cannot be entertained.

7. As far as the reliance placed by the Revenue on the decision of this Court reported in 123 ITR 427 (Mad) (cited supra) is concerned, we do not think that the said decision will be of any assistance to the Revenue. The said decision deals with the case of a manufacturer of insulated wires. The nature of manufacture has been described by the AAC as follows:

"In the instant case, the plant and machineries were worked in the factory manufacturing insulated wires and not rubber and plastic goods factories. The mere fact that the wires manufactured by the assessee had a coating of plastic, would not, in my view, convert those machineries as used in rubber and plastic goods factories. "

Pointing out the above said fact, this Court held that the manufactured goods were insulated wires and only for the purpose of insulation, rubber or plastic materials were used and therefore, it was not possible to treat the assessee as manufacturing rubber and plastic goods. Thus, this Court had observed that, "though the entry in this Appendix has to be reasonably construed, there is no question of any broad construction. If an industry does not fall within the entry, it cannot be made good by any recourse to "breadth" of construction." As far as the said reported decision is concerned, there being no unit manufacturing rubber or plastic goods and what was done was merely a coating of plastic, this Court held that the assessee therein was not entitled to higher rate of depreciation. But unlike the decision of this Court reported in 123 ITR 427(Mad) (cited supra), in the case relating to the decision of the Karnataka High Court reported in 203 ITR 614 (cited supra), the assessee showed that it had a separate division in its factory for making rubber containers, which were used for making batteries and which were not sold in the market. The Karnataka High Court pointed out that when the assessee had a separate unit engaged in the manufacture of rubber goods, and the rubber containers manufactured were used in the making of batteries, the assessee was entitled to depreciation @ 40%. We find that the decision of the Karnataka High Court has relevance to the facts of the case herein, particularly, in the context of the observation made in the Commissioner's order relating to the assessment year 1991-1992. The First Appellate Authority pointed out that though the assessee did not have a rubber or plastic goods factory exclusively, it had a unit wherein moulds and moulding tools for manufacturing plastic covers, seals, shrouds were installed and such plastic covers, seals, etc. manufactured were finally utilised in the manufacture of products dealt in by the assessee. He had also pointed out that installation of the moulds and moulding tools in the factory of the appellant was never in dispute. The said order of the Commissioner is dated 07.11.1996. We find from the order dated 19.07.2000 relating to the assessment year 1999-2000 that the Joint Commissioner, while passing the giving effect to order of the Commissioner dated 21.09.1999, had granted the relief under Section 80-HH in respect of Pondicherry Unit. In the background of the said facts, we feel that even though the document placed before this Court dated 23.09.1991 is an acknowledgement from the Government of India, Ministry of Industry, Department of Industrial Development, Entrepreneur Assistance Unit and as per the memorandum submitted by the assessee, it is for the manufacture of Item Code 85365001 relating to Other Switches of Plastics; Item Code 85365009 relating to Other Switches of Other Materials; Item Code 85366901 relating to Plugs and Sockets of Plastics and Item Code 85366909 relating to Plugs and Sockets of other materials, in the unit at Pondicherry, yet, we feel that for the purpose of considering the relief of depreciation @ 40%, in the interest of justice, the matter should be remitted back to the Assessing Officer for the purpose of finding out whether recognition has been granted to the said unit as a separate unit. If the unit established is a separate unit, then, as held in the decision reported in 203 ITR 614 (cited supra), the assessee will be entitled to claim depreciation @ 40%. The assessee shall produce the Certificate of Registration as regards Pondicherry Unit recognised as a separate unit by the Ministry of Industry before the said authority so as to enable him to pass orders on grant of relief as per the provisions of the Act.

8. As far as the second substantial question of law is concerned, it is not necessary for us to consider the said question, in the light of the order passed above as regards the first substantial question of law. The appeals are disposed of accordingly.

(C.V.J.) (K.R.C.B.J.)

nv

03.09.2012

Index: Yes

Internet: Yes

To

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CHITRA VENKATARAMAN,J.

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Tax Case Appeal Nos. 422, 424,  
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