

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

TCA.Nos.833 & 835 of 2018

M/s.Ramco Industries Ltd.
No.47, P.S.K Nagar,
Rajapalaym-626117.

.. Appellant in
both appeals

Versus

The Deputy Commissioner of
Income Tax, Corporate Circle-2
Madurai.

.. Respondent in
both appeals

सत्यमेव जयते

COMMON PRAYER:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, to set aside the orders of the Tribunal in ITA.Nos.1675/Chny/2017 Assessment Year 2012-13 and 1711/Chny/2017 Assessment Year 2012-13 dated 27.04.2018 and allow the appeals.

For Appellant in both
Appeals : Mr.P.J.Rishikesh

For Respondent in
both Appeals : Mrs.V.Pushpa

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN,J.,]

(1)By consent, both the Tax Case Appeals are taken up together for final hearing and are disposed of by this common judgment.

(2)The facts narrated in brief, for the purpose of disposal of these appeals, are as follows:-

1. The Assessee company is the appellant herein and it is carrying on the business of building products like asbestos etc., and it filed its return of income for the Assessment Year 2012-13 on 21.09.2012 with a returned income of Rs.38,22,56,810/- and the same was processed under Section 143[1] of the Income Tax Act, 1961, [in short "the IT Act"] on 21.08.2014 and it was selected for scrutiny. A notice under Section 143[2] of the IT Act was issued on 08.08.2013 and thereafter, it was heard on various occasions. The issue only pertains to the claim of depreciation with regard to machineries used by the appellant/assessee Company for Pollution Control Measures.

2. The appellant/assessee Company before the Assessing Officer, has produced the Certificate of the Chartered Engineer to claim depreciation of cent percent on the ground that the machineries used, are under operation for Pollution Control measures. However, the Assessing Officer has disallowed the claim of cent percent and 80% claim of depreciation and restricted to the level of ordinary claim of 15% for the first quarter as allowed under the Income Tax Act and further depreciation has been allowed to the extent of 20%, vide Assessment Order dated 31.03.2016.
3. The appellant/assessee Company, aggrieved by the Assessment Order, filed an appeal before the Commissioner of Income Tax [Appeals]-I, at Madurai [in short "CIT [Appeals]"] and the Appellate Authority, vide order dated 05.04.2017, dealt with the claim of depreciation and affirmed the order of the Assessing Officer.
4. The appellant/assessee Company, challenging the legality of the order passed by the CIT [Appeals], filed further appeals in ITA.Nos.1675 & 1676/Chny/2017 and the Revenue also filed appeals in ITA.Nos.1711 & 1903/Chny/2017 [for the Assessment Years 2012-13 & 2103-14] before the Income Tax Appellate Tribunal, "B" Bench, at Chennai [in short "ITAT"].

5. The ITAT has passed a common order dated 27.04.2018 and while dealing with the issue relating to depreciation, after extracting the relevant portion of the order passed by CIT [Appeals], has placed reliance upon the Google study in order to have an idea about the air pollution control equipments. The ITAT, based on the Google search study, had concluded as follows:-

7. From the above, it is clear that the Air Pollution Control devices or equipments, specified in the depreciation table, supra, are a series of devices which would prevent a variety of different pollutants, both gaseous and solid, from entering the atmosphere, mainly the exhaust gases passing through the Industrial stacks. These systems [in the industrial parlance, a group of integrated plant and machinery for an independent sub-function], if they are installed in the plant in the exhaust pipes or stacks which led them to atmosphere, they would reduce the air pollution significantly. However, from the nature and the functions of the impugned equipments, as extracted from the order of the CIT[A], supra, the Pneumatic conveying system is a single deck vibrating screen for collection of foreign particles which is suitable for manual slitting and dumping of bags. Bag opening device and shredder is only

bag opening device, stirrers and cutting knife is nothing but a machine, i.e., a stirrer and cutting knife, the Fabrication and Erection of silo tanks is nothing but a silo fabricated for storage of cement and the ABT Meter is nothing but an electrical meter to take reading of electrical units and they are not part of any of the Air Pollution Control Devices or systems or equipments, but like any other plant or machinery or tools or a tank performing other functions and hence the CIT[A] is correct in concluding that the engineer is not correct in certifying them as dust collector system etc., and in confirming the action of the Assessing Officer in denying higher depreciation. Corresponding appeal grounds of the assessee fail.

8. In the result, the assessee's appeal for AY 2012-13 is treated as partly allowed and the appeal for AY 2013-14 is treated as allowed."

6. The Assessee Company, aggrieved by the impugned common order of ITAT, has filed the present Tax Case Appeals and it was admitted/entertained on 27.11.2018 on the following substantial questions of law :-

- 1) Whether the Income Tax Appellate Tribunal is justified in relying on an evidence, which was never a part of its record?*
- 2) Does not the order of the Income Tax Appellate*

Tribunal violate the principles of natural justice, when it has not afforded an opportunity to this appellant to rebut fresh evidence, especially when the said evidence based on 'google study' is the reason for dismissing the appeal of the appellant?

3) Is not pulveriser, duct collector and ball mill, air pollution controlling equipment as per R-6-III-machinery and plant-3[viii][c] and hence, entitled for 100% depreciation? and

4) Whether the equipments are air pollution control devices or systems, which are entitled for higher depreciation?

(3)Mr.P.J.Rishikesh, learned counsel for the appellant/assessee Company has invited the attention of this Court to paragraph Nos.6 and 7 of the impugned common order passed by ITAT and would submit that ITAT, in paragraph No.6, has extracted the relevant portion of the order passed by CIT [Appeals] and in order to reach the conclusion that the machineries used for pollution control measures are like any other plant or machinery or tools or a tank performing other functions and thereby, confirmed the findings of the CIT [Appeals], is *per se* unsustainable for the reason that for the purpose of reaching the said conclusion, primordial reliance has been placed upon the Google study done by ITAT, that too, without putting either the assessee or the Revenue on notice. The learned counsel for the appellant/assessee Company has

also invited the attention of this Court to the provisions of Section 255 of the IT Act, 1961 as well as Rules 18 and 29 of the Income Tax [Appellate Tribunal] Rules, 1963 and would submit that the substantial provision as well as the subordinate legislation do not expressly exclude the applicability of the principles of natural justice and would further add that under sub-section [6] of Section 255 of IT Act *"the Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income Tax Authorities referred to in Section 131...."*. The learned counsel, further drawing the attention of this Court to Section 131, would submit that as per sub-section [1] of Section 131, the authorities meant for the purpose of Income Tax Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matter, viz., [a]discovery and inspection ; [b]enforcing the attendance of any person, including any officer of a banking company and examining him on oath ; [c]compelling the production of books of account and other documents ; and [d] issuing commissions and assuming for the sake of argument, the report of the Chartered Engineer produced before the Assessing Officer which was also referred to by CIT [Appeals], lack necessary particulars

and an opportunity should have been afforded to the appellant/assessee to take out an application for appointment of an Expert Commission or the Tribunal, suo motu appointed some other Expert to go into that aspect and without affording any opportunity, whatsoever, the ITAT suo motu rendered its findings based upon the Google study and therefore, prays for remanding of the matters insofar as substantial questions of law Nos.1 and 2 are concerned.

(4) *Per contra*, Mrs.V.Pushpa, learned Standing counsel appearing for the respondent/Revenue has invited the attention of this Court to the Order of Assessment, the Order passed by CIT [Appeals] as well as the impugned common order passed by ITAT and would submit that the Report of the Chartered Engineer is bereft of any material particulars / details and the authorities below as well as the Tribunal had taken into consideration, the Report of the Chartered Engineer as well as the bills pertain to the purchase of the said machineries and had rightly reached the conclusion that the machineries are not meant exclusively for pollution control measures and the findings rendered are concurrent in nature and further, there are no substantial questions of law arise for adjudication in these appeals and prays for dismissal of the same.

- (5) This Court paid its best attention to the rival submissions and also perused the materials placed before it.
- (6) Sub-section [6] of Section 255 of the Income Tax Act, 1961, in turn, refers to Section 131 of the Act and under Sub-section [1] of Section 131 of the Act, the authorities have the same powers that are vested in a Court under the Code of Civil Procedure, 1908 - the details of which, have been enumerated in the earlier paragraphs.
- (7) Rule 29 of the Income Tax [Appellate Tribunal] Rules, 1963 also speaks about the production of additional evidence and Rule 30 speaks about the mode of taking additional evidence and it is relevant to extract the same:-

Rule 29:-Production of additional evidence before the Tribunal:-

The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

Rule 30-Mode of taking additional evidence:-

Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.

(8)A perusal and consideration of paragraph No.7 of the impugned common order passed by ITAT would disclose that the Tribunal, for reaching the conclusion to confirm the order of the Assessing Officer, has also done its part by doing some research on Google Study. Admittedly, the research done by ITAT in the form of Google study was not put either to the appellant/assessee Company or to the said Revenue. As already pointed out by this Court in the earlier paragraphs, in the absence of any specific rule including the applicability of the natural justice, it is a well settled position of law that adherence to the principles of natural justice, is implied in any legislation.

(9)As rightly pointed out by the learned counsel for the appellant/assessee with regard to the study or research done by ITAT, the appellant/assessee was not put on notice. Hence, on this sole ground, the impugned common order warrants interference.

(10)The Substantial Questions of Law Nos.1 and 2 are answered in affirmative and in favour of the appellant/assessee Company.

(11)In the result, the Tax Case Appeals are PARTLY ALLOWED and the impugned common order of ITAT insofar as ITA Nos.1675/Chny/2017 and 1711/Chny/2017 [Assessment Year 2012-13] are set aside and the said appeals are remanded to the Tribunal for fresh consideration and adjudication.

(12)In the light of the said appeals are being remanded for fresh adjudication, there is no necessity to answer the substantial questions of law Nos.3 and 4. The Income Tax Appellate Tribunal, "B" Bench, Chennai, is directed to accord priority and dispose of ITA Nos.1675/Chny/2017 and 1711/Chny/2017 [Assessment Year 2012-13] as expeditiously as possible. No costs.

[M.S.N.,J] [A.Q., J]
04.03.2020

AP
Internet : Yes

To

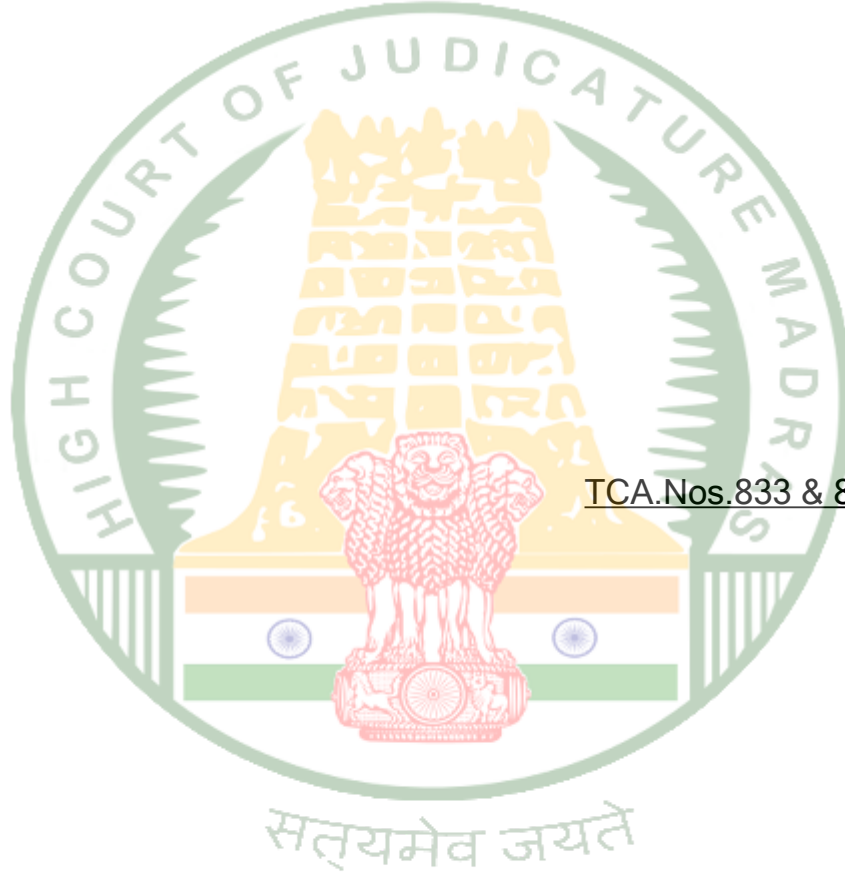
1.The Income Tax Appellate Tribunal
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