IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No. 393 of 2011

The Commissioner of Income Tax -1.
Coimbatore ... Appellant

v.

M/s. Elgi Rubber Co Ltd.,
(Formerly known as Elgi Tread India Ltd.),
2000, Trichy Road,
Singanallur, Coimbatore 641 005.
PAN No.AAACE4565F ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 11.02.2011 in I.T.A.No.1568/Mds/2010 for the Assessment Year 2007-08.

For Appellant : Mrs. K.G. Usha Rani
Standing Counsel

For Respondent : Mr. M.P. Senthil Kumar

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.1568/Mds/2010 in respect of the Assessment Year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The Assessing Officer while completing the assessment has restricted the assessee's claim for depreciation on straight line method to 7.69% as per Appendix-1A read with Rule 5(1A) of Income Tax Rules on the ground that the assessee had not exercised the option under section Proviso to Rule 5(1A) of the Incomes Tax Rules for claiming depreciation at a higher rate, in a separate form.

2.2 Against the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) allowed the depreciation claimed by the assessee on account of wind mill and deleted the disallownace made by the Assessing Officer. Against the said order, the Revenue preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal dismissed the appeal. The Assessing Officer also rejected the claim for deduction under section 801A on wind mills, since the loss incurred in one wind mill, if set off against the profit of another wind mill, resulted in a negative figure. More over, the assessee did not maintain separate sets of accounts for each undertaking as required under section 801A(7) and Rule 18BB(2).

2.3 Against the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer disallowing the depreciation at the higher rate of 80%. The said order was challenged by the assessee before the Income Tax Appellate Tribunal and the Tribunal following the decision reported in **(2019) 412 ITR 69 (Mad) [Commissioner of Income Tax, Coimbatore v. Bannari Amman Sugars Limited]** held that the assessee is eligible for deduction under section 80-1A on generation of power whether used for captive consumption or otherwise, by treating each wind mill a separate unit. Against the said order, the Revenue has filed the above appeal.

3.The appeal was admitted on 28.09.2011 on the following substantial questions of law:

> *"(i) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the assessee have satisfied the requirement of Second Proviso to Rule 5(1A) of the Income Tax Rules, and they are entitled for depreciation on Wind Mills as per Appendix-I is valid?*
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> *(ii) Whether on the facts and circumstances of the case, the Tribunal was right in law in granting 80% of depreciation on Wind Mills, even though the proviso to section 32(1)(i) and Rule 5(1A) clearly stipulate that only rate of depreciation on cost method as provided for in Appendix -1A will be relevant for power generating Machinery?*
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> *(iii) Whether on the facts and circumstances of the case, the Tribunal was right in law in granting depreciation at the rate of 80% on Wind Mills, even though the assessee is entitled 7.69% of the cost and this rate of depreciation has been correctly allowed*

by the Assessing Officer?

(iv) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that, the assessee is entitled for higher rate of depreciation even though the assessee has filed return on due date and has also not exercise his option separately?

(v) Whether on the facts and circumstances of the case, the Tribunal was right in setting aside the orders of the lower authorities and the claim of the assessee that the deduction under section 801A of the act would be available even for a captive ;unit is valid?

(vi) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that, each wind mill has to be considered as a separate undertaking for deduction under section 801A of the Act?"

4. Mr. M.P. Senthil Kumar, learned counsel appearing for the respondent submitted that the questions of law Nos. 1 to 4 are covered by the decisions of the Hon'ble Division Bench of this court reported in **(2015) 55 Taxmann.com 428 (Madras) [Commissioner of Income**

Tax, Coimbatore, v. Kikani Exports (P) Ltd.] and wherein the Hon'ble Division Bench decided the questions of law in favour of the assessee.

5. So far as the question of law No.5 is concerned, the learned counsel appearing for the respondent submitted that the said question of law is covered by the decisions of the Hon'ble Division Bench of this court reported in **(2014) 51 Taxmann.com 183 (Madras) [Commissioner of Income Tax, Trichy v. Cethar Ltd.]** and **(2019) 104 Taxmann.com 1 (Madras) [Commissioner of Income Tax, Coimbatore v. Bannari AmmanSugars Ltd.,]** wherein the respective Hon'ble Division Bench decided the issue in favour of the assessee.

6. So far as the question of law No.6 is concerned, the learned counsel appearing for the respondent submitted that there is no necessity for deciding this question of law for the reason that 5th question of law would cover the same.

7. In these circumstances, following the ratio laid down in the

Judgments reported in **(2015) 55 Taxmann.com 428 (Madras) [cited supra], (2014) 51 Taxmann.com 183 (Madras) [cited supra.]** and **(2019) 104 Taxmann.com 1 (Madras) [cited supra],** we decide the questions of law Nos. 1 to 5 in favour of the assessee. Since the 5th question of law covers the 6th question of laws, we are not giving any separate finding with regard to the 6th question of law In these circumstances, the appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

[M.D., J.] [T.V.T.S., J.]
24.02.2021

Index : Yes/No
Internet : Yes
Rj

To

The Income Tax Appellate Tribunal,
Chennai, "C" Bench

M. DURAISWAMY, J.
and
T.V. THAMILSELVI, J.

Rj

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