

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1537/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11

The Joint Commissioner of
Income Tax (OSD),
Corporate Circle – 1(2),
Chennai - 600 034.

v. M/s Chettinad Morimura
Semiconductor Material Pvt. Ltd.,
No.37, Old Mahabalipuram Road,
Kazhipattur Village,
Kanchipuram – 603 103.

(अपीलार्थी/Appellant)

PAN : AAACC 2461 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nanda Kumar, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri K.B. Muralidharan, CA

सुनवाई की तारीख/Date of Hearing : 16.08.2016

घोषणा की तारीख/Date of Pronouncement : 30.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Chennai, dated 11.02.2016 and pertains to assessment year 2010-11.

2. The only issue arises for consideration is with regard to depreciation claimed by the assessee on the windmill.

3. Shri V. Nanda Kumar, the Ld. Departmental Representative, submitted that the Assessing Officer disallowed the claim of the assessee on the ground that the assessee has adjusted the previous year loss from the windmill against the income from other business. Subsequently, the profit from the windmill is also claimed as deduction against other business income by which the income from other business is reduced. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessee cannot have double benefit by adjusting the depreciation loss by the eligible business against the income of the taxable business. Referring to the judgement of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. v. ACIT (2012) 340 ITR 477, the Ld. D.R. submitted that the Revenue has already filed an appeal in the Supreme Court against the judgement of Madras High Court. Therefore, the Assessing Officer has not followed the judgement of Madras High Court. On a query from the Bench, when the CBDT instructed its officers to withdraw all the appeals filed against the judgement of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. and

directed the officers to accept the Madras High Court judgement in Velayudhaswamy Spinning Mills (P) Ltd., how the appeal is maintainable before this Tribunal? The Ld. D.R. could not clarify anything.

4. We heard Shri K.B. Muralidharan, the Ld. representative for the assessee also. The adjustment of depreciation loss was the subject matter of discussion before the Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. (supra). The Madras High Court found that the adjustment as claimed by the assessee may be allowed and the depreciation can be set off. Admittedly, the Revenue has filed appeal before the Apex Court against the judgement of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. (supra). Recently, the CBDT has directed its officers to accept the judgement of Madras High Court and withdraw all the appeals filed by the Revenue. This direction of CBDT is binding on all its officers. Therefore, the Revenue ought not have filed appeal before this Tribunal contending that the appeal filed by the Revenue before the Apex Court against the judgement of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. is pending. In view of the circular of the CBDT instructing its officers not to file appeal and

accept the decision of Madras High Court in Velayudhaswamy Spinning Mills (P) Ltd. (supra), the appeal filed by the Revenue is not maintainable.

5. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 30th September, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A.Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 30th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.