

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास
अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.2492/Mds/2014**
and C.O.No.129/Mds/2014.

(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Income Tax Officer,
Ward II(4),
Coimbatore 641 018.

Vs. Smt. V. Sabithamani,
358, C/o. Pioneer Corporation,
Mettupalayam Road,
Coimbatore 641 043.

(अपीलार्थी/Appellant)

[PAN :AJXPS 7311Q]

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri. A.V. Sreekanth, IRS, JCIT.
प्रत्यर्थी की ओर से / Respondent by : Shri. V. Jagadisan, C.A.,

सुनवाई की तारीख/Date of hearing : 21 .01.2015.

घोषणा की तारीख /Date of Pronouncement : 21.01.2015.

आदेश / O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 22.7.2014 passed by Ld CIT(Appeals)-I, Coimbatore and they relate to the assessment year

2010-11. The revenue is aggrieved by the decision of Ld CIT(Appeals) in holding that the provisions of Explanation 3 to sec. 43(1) is not applicable to the second hand wind mill purchased by the assessee. The assessee is aggrieved by the decision of Ld CIT(Appeals) in determining the value of second hand machinery at ₹ 1.50 crores in the place of Cost of purchase of ₹ 2.36 crores.

2. The facts relating to the above said issue are that the assessee has purchased a second hand wind mill on 23.3.2009 from M/s Soundararaja Mills Limited for a value of Rs.2.36 crores. The assessee claimed depreciation of ₹1.12 crores on the above said value. The Assessing Officer noticed that the seller had already claimed almost full depreciation on the above said wind mill. Hence the Assessing Officer, by invoking the provisions of Explanation 3 to sec. 43(1) determined the cost of Wind mill at ₹ 43,28,388/-. The Assessing Officer computed the depreciation admissible on the above said amount at ₹17,31,355 for the immediately preceding year, i.e., for AY 2009-10 and thus arrived at the opening WDV for the year under consideration at ₹25,97,033/-. Accordingly he computed the depreciation admissible for the year under consideration at ₹20,77,626/- and accordingly disallowed as sum of ₹91,34,670/- as excess claim of depreciation.

3. In the appellate proceedings, the Ld CIT(Appeals) held that the provisions of Explanation 3 to sec. 43(1) cannot be applied, since it cannot be said that the motive of the assessee was to reduce the tax liability by claiming depreciation on enhanced cost. However, the Ld CIT(Appeals) determined the cost of wind mill at ₹1.50 crores and accordingly directed the Assessing officer to adopt the cost of wind mill at ₹ 1.50 crores.

4. Since the dispute before us revolves around the applicability or otherwise of Explanation 3 to sec. 43(1) of the Act, we extract the said provisions, for the sake of convenience:-

“Explanation 3:- Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Assessing Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income tax (by claiming depreciation with reference to the enhanced cost), the actual cost to the assessee shall be such an amount as the Assessing officer may, with the previous approval of the Joint Commissioner, determine having regard to all the circumstances of the case.”

A careful perusal of the above said provisions would show that the same relates to the determination of “actual cost” to the assessee, meaning thereby, the requirement of determination of actual cost shall arise only in the year of purchase or in the year in which the depreciation was claimed for the first time.

5. In the instant case, we have noticed that the assessee had purchased the Wind mill on 23.03.2009 and she has also claimed depreciation thereon during the assessment year 2009-10. Accordingly, it was pointed out to both the parties that the question of determination of "actual cost" shall arise only in AY 2009-10 and not during the year under consideration. On verification of details, both the parties submitted that the assessment relating to AY 2009-10 had been re-opened by the assessing officer and the depreciation claim of the assessee has been restricted. It was further submitted that the assessee has preferred appeal against the same and it is pending before Ld CIT(Appeals). Under these set of facts, the Ld D.R fairly agreed that the question of determination of "actual cost" during the year under consideration does not arise and in this year, the depreciation has to be allowed on the WDV of the wind mill as determined in AY 2009-10.

6. Under these set of facts, we are of the view that the issue contested before us is consequential, i.e., it would depend upon the outcome of the identical disallowance made in AY 2009-10. For the above said reason, the decision rendered by Ld CIT (Appeals) is liable to be set aside.

7. Accordingly, we set aside the order of Ld CIT(Appeals) and restore all the issues to the file of the assessing officer with the direction to re-work the amount of depreciation on the WDV determined in AY 2009-10 after the receipt of appellate order of Ld CIT(Appeals). If the assessee is aggrieved by the same, he may pursue the same in accordance with the law.

8. In the result, the appeal of the revenue and the cross objection of the assessee are treated as allowed for statistical purposes.

Order pronounced on the 21st day of January, 2015, at Chennai.

Sd/-
(विकास अवस्थी)
(VIKAS AWASTHY)
न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-
(बी.आर. बास्करन)
(B.R. BASKARAN)
लेखा सदस्य/ ACCOUNTANT MEMBER

दिनांक/Dated:21.01.2015.

K.V

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.

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