

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 केसमक्ष

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

आयकर अपील सं./ITA No. 2495/Mds/2014

निर्धारण वर्ष /Assessment Year : 2010-11

The Assistant Commissioner of  
Income Tax,  
Circle III,  
63, Race Course Road,  
Coimbatore – 641 018.

(अपीलार्थी/Appellant)

v. Shri K. Rajinikanth,  
603, C-Block, Pioneer Complex,  
1075, Avinashi Road,  
Coimbatore – 641 018.

PAN : ADDPR 3075 L

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A.V. Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri M. Baskaran, CA

सुनवाई की तारीख/Date of Hearing : 19.01.2015

घोषणा की तारीख/Date of Pronouncement : 19.01.2015

### **आदेश / O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the Revenue is directed against the order dated 08.07.2014, passed by Ld. Commissioner of Income Tax (Appeals)-I, Coimbatore, relating to assessment year 2010-11. The Revenue is aggrieved by the decision of Id. CIT(Appeals) in allowing deduction under Section 80-IA of Income-tax Act, 1961 (in short 'the Act') claimed by the assessee.

2. The assessee had claimed deduction under Section 80-IA of the Act in respect of income generated from windmills. The Assessing Officer, by following the provisions of Section 80-IA(5) of the Act, took the view that the profits and gains of windmills business should be computed as if it were the only source of income of the assessee right from commencement of business. Accordingly, the A.O. held that the business losses, depreciation and investment allowances of earlier years should be taken into account in determining the quantum of deduction admissible under Section 80-IA, even though there may have been set off against the profits of taxpayer from other sources. Though the assessee placed reliance on the decision of Hon'ble jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. v. ACIT (234 CTR 368) to content that restrictions placed under Section 80-IA(5) should be applicable after initial year of claiming of deduction, yet, the Assessing Officer did not accept the same on the reason that the Department has preferred SLP before the Hon'ble Supreme Court against the decision rendered by the Hon'ble Madras High Court. Accordingly, he disallowed the claim raised by the assessee under Section 80-IA(5) of the Act.

3. In the appellate proceeding, the Ld. CIT(Appeals) allowed the claim of the assessee by following the decision of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills referred supra.
4. Aggrieved, the Revenue has filed this appeal before us.
5. We have heard the parties and perused the records. Since the Ld. CIT(Appeals) has followed the binding decision of Hon'ble Madras High Court in allowing the claim of deduction under Section 80-IA to the assessee, we do not find any reason to interfere with his order on this issue
6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 19<sup>th</sup> 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

चेन्नई/Chennai,  
दिनांक/Dated, the 19<sup>th</sup> January, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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