

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

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No. 2138/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-12

The Deputy Commissioner of
Income Tax,
Circle -1,
Tirupur

Vs. M/s. R.S. Yarns and Power P. Ltd,
40(1) S.V. Colony East,
9th Street,
P.N. Road,
Tirupur 641 602

(अपीलार्थी/Appellant)

[PAN AADCR 5203N]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. P. Radhakrishnan, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : None

सुनवाई की तारीख/Date of Hearing : 16-12-2015
घोषणा की तारीख /Date of Pronouncement : 16-12-2015

आदेश / ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the Department is directed against the order of the Commissioner of Income-tax (Appeals)-3, Coimbatore for the assessment year 2011-2012.

2. The only ground raised by the Revenue in this appeal is with regard to reduction of addition made on account of disallowance of ₹21,46,473/- made u/s.80IA of the Income Tax Act, 1961.

3. The brief facts of the case is that the assessee company filed return of income for the assessment year 2011-12 on 29.09.2011 declaring an income of ₹15,46,300/-. The case was selected for scrutiny and the assessment was completed on 25.03.2014 disallowing ₹21,46,473/- under section 80IA of the Act by notionally bringing in and setting off the brought forward loss for determining the profits qualifying for deduction u/s.80IA from the initial assessment year being the year relevant to the financial year in which operations relating to the windmill infrastructure commenced. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. On appeal, the Commissioner of Income Tax (Appeals) observed that the issue is covered by the jurisdictional High Court order in the case of *CIT vs. Velayuthasamy Spinning Mills 231 CTR 368* and allowed the claim of the assessee. Against this, the Revenue is in appeal before us.

5. None appeared on behalf of the assessee, thus we dispose the case on merits after hearing the Departmental Representative. The only issue arises for consideration is with regard to deduction claimed by the assessee under Section 80-IA of the Act in respect of windmills. The Assessing Officer rejected the claim of the assessee on the ground that the Department has filed a Special Leave Petition against the judgment of Madras High Court in *Velayudhaswamy Spinning Mills (P) Ltd vs. ACIT 231 CTR 368*. However, the Commissioner of Income Tax (Appeals) by following the judgment of Madras High Court allowed the claim of the assessee.

6. Now the only contention of the Department before this Tribunal is that the Revenue has not accepted the judgment of Madras High Court and an appeal has already been filed along with Special Leave Petition and the same is pending before the Apex Court. This Tribunal is of the considered opinion that mere pendency of Special Leave Petition before the Apex Court cannot be a reason to take a different view. The judgment of Madras High Court is binding on all the authorities in the State of Tamil Nadu and Union Territory of Pondicherry. Therefore, the Commissioner of Income Tax (Appeals) has rightly allowed the claim of the assessee by following the binding

judgment of Madras High Court in *Velayudhaswamy Spinning Mills (P) Ltd (supra)*. Therefore, this Tribunal do not find any infirmity in the order of the Commissioner of Income Tax (Appeals).

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on Wednesday, the 16th day of December, 2015, at Chennai.

Sd/-
(चल्ला नागेन्द्र प्रसाद)
(CHALLA NAGENDRA PRASAD)
न्यायिक सदस्य/ JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:16.12.2015

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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