

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
**BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ I.T.A.No.1699/Mds/2016

&

C.O. No. 94/Mds/2016

निर्धारण वर्ष/Assessment Year : 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle - 2,
Sixty Feet Road,
Tirupur - 641 602.

M/s. RBR Garments Pvt. Ltd.,
Vs. No. 284, Ramabiran Colony,
Dharapuram Road,
Tirupur - 641 608.

[PAN: AACDR 0083N]

(Appellant)

(Respondent/ Cross objector)

अपीलार्थी की ओर से/Appellant by : Mrs. H. Kabila, JCIT
प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 29.11.2016
घोषणा की तारीख/Date of Pronouncement : 30.11.2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue and Cross Objections by the assessee are directed against order of Commissioner of Income-Tax (Appeals)-3 Coimbatore, for the above assessment year passed u/s.

143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). We consider the facts as narrated in ITA No. 1699/Mds/2016.

2. The only issue arises for consideration is with regard to deduction claimed by the assessee u/s. 80IA of the Income Tax Act, 1961 (in short 'the Act') in respect of windmills.

3. There is a delay of 70 days in filing the appeal by the Revenue. At the time of hearing the Ld. DR has filed an affidavit explaining the reasons that the delay occurred due to financial year end of completion of scrutiny assessments and immediately after March 2016, the AO was deputed under election duty. After hearing the submission, we are satisfied with sufficient and reasonable cause for filing the appeal belatedly and we therefore condone the delay and admit the appeal.

4. The Brief facts of the case are that the assessee company filed Return of income for the assessment year 2010-2011 on 15.10.2010 admitting total income of Rs. 98,68,440/-. The case was selected for scrutiny and the assessment was completed by disallowing Rs. 34,67,114/- u/s. 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).

5. 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 340 ITR 477 and allowed the claim of the assessee. Against Commissioner of Income Tax (Appeals) order, the Revenue assailed an appeal before Tribunal.

6. We heard the rival submissions and perused the material on record. The Ld. DR argued the grounds and we found on perusal of Assessment Order at page 3 that the Revenue has not accepted the judgment of Madras High Court and filed Special Leave Petition (SLP) in the Supreme Court and same is pending. 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). The appeal of the Revenue is dismissed.

7. The assessee has filed Cross Objection in support of the Commissioner of Income Tax (Appeals) order. Since, the Revenue appeal is adjudicated and dismissed. The CO. No. 94/Mds/2016 filed by the assessee becomes infructuos and dismissed.

8. In the result, the Revenue Appeal for the assessment year 2010-11 and Cross Objection of the assessee for the assessment year 2010-11 is dismissed.

Order pronounced on Wednesday, the 30th day of November, 2016 at Chennai.

Sd/-

(संजय अरोड़ा)

(SANJAY ARORA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 30th November, 2016

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR

3. आयकर आयुक्त (अपील)/CIT(A)
6. गार्ड फाईल/GF