(2009) 09 MAD CK 0201

Madras High Court

Case No: Tax Case (Appeal) No''s. 670 and 671 of 2009

The Commissioner of Income Tax		APPELLANT
	Vs	
Hi Tech Arai Limited		RESPONDENT

Date of Decision: Sept. 1, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 32(1)

Citation: (2010) 236 CTR 321 : (2010) 321 ITR 477

Hon'ble Judges: R. Banumathi, J; F.M. Irbrahim Kalifulla, J

Bench: Division Bench

Advocate: T. Ravikumar, for the Appellant;

Judgement

F.M. Ibrahim Kalifulla, J.
The Revenue has come forward with the above appeals raising the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the assessee is entitled to additional depreciation on the purchase of Wind Mills even though the main business of the assessee is not producing or generating of electricity?

2. Whether on the facts and circumstances of the case, the Tribunal was right in allowing additional depreciation u/s 32(1)(iia) on wind mill amounting to Rs. 33,29,562/- and Rs. 37,28,824/- respectively for assessment years 2003-2004 and 2004-2005 was proper?

3. Whether the Tribunal was right in not considering the judgment of a Co-ordinate Chennai Bench passed in ITA 2107/Mds/06 dated 25.06.2008 in the case of Texmo Industries which is binding on it and in favour of the revenue as it against the ratio of the judgment of the Constitution Bench of the Supreme Court reported in AIR

1989 SC 1933?

4. Whether the new machinery or plant purchased is eligible for additional depreciation or only those plant and machinery purchased and used in its main business the exemption contemplated u/s 32(1)(iia) is to be given?

2. We heard Mr. T. Ravi kumar, learned Standing Counsel for the appellant. The learned Counsel in his submissions contended that the Tribunal under similar circumstances earlier disallowed the additional depreciation claimed u/s 32(1)(iia) of the Income Tax Act, whereas by the impugned order, the Tribunal has taken a diametrically opposite view and on this ground itself the order is liable to be set aside. The learned Counsel then contended that the additional depreciation was claimed on the setting up of wind mills for generation of power and inasmuch as the assessee is only engaged in the manufacture of oil seeds etc., the setting up of a wind mill has absolutely no connection for the manufacture of oil seeds, which is a power industry and therefore, the assessee was not entitled to claim the additional depreciation as allowed u/s 32(1)(iia) of the Act.

3. We are not in a position to appreciate either of the contentions of the learned Counsel for the petitioner. As far as the first contention is concerned, when the Tribunal by the impugned order has applied Section 32(1)(iia) of the Act, to the facts involved in the case of the assessee and has found that the assessee is entitled for the additional depreciation claimed under the said provision, it cannot be held that simply because a Co-ordinate Bench of the Tribunal had earlier taken a different view, the Tribunal on this occasion also ought to have followed the same. When we find that the Tribunal has applied the law correctly in the impugned order, there is no gain saying that there was an earlier order by the Co-ordinate Bench and therefore, for that reason, this time also the Tribunal should have blindly followed its own earlier decision even if such earlier decision did not reflect the correct position of the law.

4. As far as the contention based on Section 32(1)(iia) of the Act, is concerned, the assessment years pertain to 2003-2004 and 2004-2005. The provision, which is relevant for our purpose, reads as under:

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii):

Provided that such further deduction of fifteen per cent shall be allowed to:

(A) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April 2002; or

(B) any industrial undertaking existing before the 1st day of April 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than ten per cent.

5. In the case on hand, the assessee is stated to have set up two wind mills in addition to the already existing four wind mills and thereby increased its power generation capacity by above 50%. It is true that the assessee is a company engaged in the business of manufacture of oil seeds, moulded rubber parts, reed value assemblies apart from generation of power. After the installation of the additional wind mills, both prior to as well as after the installation of the additional wind mills, the assessee was using wind energy for generating power for its captivate consumption apart from selling the surplus power generated to the Tamil Nadu Electricity Board. As far as application of Section 32(1)(iia) of the Act, is concerned, what is required to be satisfied in order to claim the additional depreciation is that the setting up of a new machinery or plant should have been acquired and installed after 31st March 2002 by an assessee, who was already engaged in the business of manufacture or production of any article or thing. The said provision does not state that the setting up of a new machinery or plant, which was acquired and installed upto 31.03.2002 should have any operational connectivity to the article or thing that was already being manufactured by the assessee. Therefore, the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds etc. is totally not germane to the specific provision contained in Section 32(1)(iia) of the Act.

6. In such circumstances, we are not able to appreciate the contention of the learned standing counsel for the appellant on the ground that the order of the Commissioner of Income Tax (Appeals) as confirmed by the Tribunal should be interfered with. It cannot also be said that setting up of a wind mill will not fall within the expression setting up of a new machinery or plant. We do not find any error in the conclusion of the Tribunal in confirming the order of the Commissioner of Income Tax (Appeals). We, therefore, do not find any question of law much less substantial question of law to entertain these appeals. These appeals fail and the same are dismissed. Consequently, M.P. No. 1 of 2009 is also dismissed.