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## Commissioner of Income Tax Vs VTM Limited

T.C. (A) No. 881 of 2009

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**Court:** Madras High Court

**Date of Decision:** Sept. 8, 2009

**Acts Referred:**

Income Tax Act, 1961 " Section 32(1)

**Citation:** (2010) 229 CTR 70 : (2009) 319 ITR 336 : (2010) 187 TAXMAN 319

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

**Bench:** Division Bench

**Advocate:** Pushya Sitaraman, for the Appellant;

**Final Decision:** Dismissed

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### Judgement

F.M. Ibrahim Kalifulla, J.

The Revenue has come forward with this appeal, raising the following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the Tribunal was right in allowing the claim of additional depreciation on windmill u/s 32(1)

(iia)?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that generation of power by windmill would amount to

manufacture or production of any article or thing?

2. We heard Ms. Pushya Sitaraman, learned Standing Counsel appearing 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 diplomatic 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 textile goods, the setting up of a wind mill has absolutely no connection for the manufacture of textile

goods, which is the 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 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 year pertains to 2005-2006. 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 a wind mill at a cost of Rs. 5,85,60,000/- It is true that the assessee is a company

engaged in the business of manufacture of textile goods. 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 this appeal. The appeal fails and the same is dismissed. No costs.