

(2014) 11 MAD CK 0392

Madras High Court

Case No: T.C. (A). Nos. 726 and 807 of 2014

Commissioner of Income Tax

APPELLANT

Vs

New Woodlands Hotel (P) Ltd.

RESPONDENT

Date of Decision: Nov. 11, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 115JA, 143(1)(a), 143(2), 143(3), 154

Hon'ble Judges: R. Sudhakar, J; R. Karuppiyah, J

Bench: Division Bench

Judgement

R. Sudhakar, J.

1. Dr. (Mrs.) Anita Sumanth, learned counsel takes notice on behalf of the respondent/assessee.

2. The Revenue has filed these appeals challenging the order of the Income Tax Appellate Tribunal "D" Bench, Chennai, dated 1.12.2010 made in I.T.A.No. 145/Mds/2010 and C.O.No. 49/Mds/2010 for the assessment year 2000-2001, raising the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that vapour absorption machine is an energy saving device eligible for 100% depreciation?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering the fact that vapour absorption heat pump is not included in the Income Tax Rules as an asset eligible for 100% depreciation and, therefore, the rectification order passed under Section 154 of the Act was proper?

3. 1. The facts in a nutshell are as under: The respondent/assessee is in the business of hotel management. The return of income was filed by the assessee for the assessment year 2000-2001 declaring a total income of Rs.27,33,360/- and Rs.8,20,010/- under Section 115JA of the Income Tax Act (for brevity, "the Act"). The

return was processed under Section 143(1)(a) on 6.12.2001, determining the total income at Rs.8,20,010/- under Section 115JA of the Act. The case was selected for scrutiny and notice under Section 143(2) of the Act was served on the assessee on 28.11.2001. Thereafter, assessment order under Section 143(3) of the Act was passed on 11.3.2003.

3. 2. Pursuant to the same, the Assessing Officer found that depreciation on Vapour Absorption Machine, an energy saving device, was allowed to the assessee at the rate of 100% instead of 25%. Therefore, the Assessing Officer recomputed the depreciation at 25% under Section 154 of the Act vide order dated 26.3.2007.

3. 3. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) placing reliance on Appendix-I to the Income Tax Rules, 1962, which states that energy saving devices includes vapour absorption refrigeration systems, held that Vapour Absorption machine system is eligible for 100% depreciation. However, the plea of the assessee that the Assessing Officer is not justified in passing an order under Section 154 of the Act was rejected by the Commissioner of Income Tax (Appeals).

3. 4. Assailing the said order, the revenue preferred an appeal before the Tribunal and the assessee filed a cross-objection. The Tribunal, on merits, took the view that the issue as to whether Vapour Absorption Machine System is liable for 100% depreciation or not is a debatable issue, which requires examination of materials, details, particulars and application of mind and cannot be rectified in the proceedings initiated under Section 154 of the Act and consequently, held that the Assessing Officer lacked jurisdiction to exercise the power under Section 154 of the Act. The Tribunal, thus, dismissed the appeal filed by the Revenue and allowed the cross-objection filed by the assessee.

3. 5. Calling in question the said order passed by the Tribunal, the Revenue has filed these appeals on the questions of law, referred supra.

4. We have heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the Revenue and Dr.(Mrs.) Anita Sumanth, learned counsel for the assessee and perused the orders passed by the Tribunal and the authorities below.

5. The learned counsel for the Revenue tried to plead that vapour absorption machine installed by the assessee is part of the centralized air conditioner and it cannot be used as an independent machine and, therefore, depreciation at 25% should only be allowed.

6. The said plea raised by the revenue cannot be accepted as it is evident from the order of the Commissioner of Income Tax (Appeals) that Vapour Absorption System is included in Energy Saving Devices specified in Para-III, 3(iii) D(b) of Appendix-I to the Income Tax Rules, 1962 and is eligible for 100% depreciation. When there is a

specific provision in the Income Tax Rules allowing depreciation at 100% to Vapour Absorption System and the same was granted by the Assessing Officer at the first instance, the subsequent proceedings for rectification under Section 154 of the Act by merely stating that Vapour Absorption Heat Pump is a part of the Centralized Air Conditioner and liable for depreciation at 25%, without giving any reasons, runs counter to Para-III, 3(iii) D(b) of Appendix-I to the Income Tax Rules, 1962. We are, therefore, of the firm view that the Tribunal was justified in dismissing the appeal filed by the revenue and allowing the cross appeal filed by the assessee.

For the foregoing reasons, we do not find any question of law, much less substantial question of law, arising for our consideration in these appeals. Accordingly, these appeals are dismissed. No costs. Consequently, M.P.No. 1 of 2014 in T.C.(A) No. 807 of 2014 is closed.