(2016) 05 RAJ CK 0119

In the Rajasthan High Court

Case No : Income Tax Appeal No. 135 of 2014

Commissioner of Income Tax APPELLANT

Vs

M/s. Mehru Electricals & Mechanical Engineers Pvt. Ltd. RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:
Income Tax Act, 1961 — Section 32(1)(ii)

Citation : (2016) 289 CurTR 332 : (2016) 388 ITR 169

Hon'ble Judges : Mr. M.N. Bhandari and Mr. Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mrs. Parinitoo Jain, Advocate, for the Appellant-Revenue; Mr. H.R. Kumawat, Advocate, for the Non-Appellant-Assessee

Final Decision : Dismissed

Judgement

1. By this Income Tax appeal, a challenge is made to the order of Income Tax Appellate Tribunal (for short "the Tribunal") dated 28th February, 2014 whereby the appeal preferred by the assessee was allowed.

2. Learned counsel for the revenue submits that rate of depreciation was an issue before the Tribunal but without proper appreciation of law as well as facts, the appeal was allowed in favour of the assessee. The assessee had claimed depreciation and additional depreciation in excess to the rate and was not otherwise admissible on a room constructed along with cost of erection & installation of electrical items covered under "Plant & Machinery" for a wind mill.

3. Learned counsel for the appellant submits that controversy raised in the present case is pending consideration before this Court in other cases also. The Tribunal, however, allowed the appeal in reference to other judgments, which includes, the judgment in the case of Banswara Syntex Limited v. CIT in ITA No. 37/Jodh/2012.

4. If, at all, the depreciation was admissible then a dispute about rate of depreciation was required to be addressed by the Tribunal but it had failed to

decide the issue aforesaid. Accordingly, the order of the Tribunal may be set aside while maintaining the order passed by the CIT.

5. Learned counsel for the assessee has contested the appeal and submitted that the Commissioner has made observations against the judgment passed by the Madras High Court in the case of CIT v. Hi Tech Arai Ltd. reported in (2010) 321 ITR 477 (Mad.) as well as Income Tax Appellate Tribunal, Delhi (for short "the Tribunal at Delhi") on the issue about admissibility of depreciation. The judgment of Madras High Court was further challenged before the Apex Court and the appeal therein has already been dismissed confirming the order of Madras High Court. The controversy therein was about admissibility of the depreciation. The Apex Court upheld the judgment of Madras High Court, thus issue aforesaid no more survives. When the electrical items as well as construction is attached to the wind mill then depreciation would be at the rate claimed by the assessee. The depreciation and additional depreciation has been allowed by the Assessing Officer. The revenue has unnecessarily raised the issue despite controversy having been settled. The Commissioner ought to have not interfered in the order passed by the assessing authority and thus, the Tribunal has rightly set aside the order in the appeal preferred before it. Accordingly, it may be maintained.

6. We have considered submissions made by learned counsel for the parties and scanned the matter carefully.

7. It is a case where two issues have been raised by the revenue.

8. The first issue is regarding depreciation claimed on civil foundation as well as on electric turbine generator for the wind mill. The Commissioner has made a reference of judgment of Madras High Court in the case of Hi Tech Arai Ltd. (supra) so as the order passed by the Tribunal at Delhi. The observations are however that department has not accepted the verdict of the High Court, though the judgment of Madras High Court in the case of Hi Tech Arai Ltd. (supra) has been affirmed by the Apex Court. In view of the above, learned counsel for revenue could not contest the issue in regard to the admissibility of depreciation. The issue before the Madras High Court was again of a wind mill where depreciation on power generation was claimed. It was found that main business of the assessee was not of producing or generating electricity and thus, the Madras High Court decided the issue in favour of the assessee and against the revenue. The issue having been confirmed by the Apex Court on dismissal of appeal, we are unable to take a different view as has been taken by the Madras High Court and has to be applied herein also.

9. The other issue is regarding rate of depreciation.

10. According to the revenue, rate of depreciation claimed by the assessee should not have been allowed. The issue aforesaid has not been decided by the Tribunal properly.

11. We find that when the civil work and electric generator are taken to be a part

of wind mill, rate as is applicable for the depreciation for wind mill would apply to the present case also.

12. In the background aforesaid, we do not find that even a dispute can be raised regarding rate of depreciation admissible to the assessee. In our opinion, the Tribunal has rightly allowed the appeal. Finding no illegality therein, we are unable to cause interference in the order passed by the Tribunal.

13. Accordingly, the appeal in hands of the revenue is dismissed.

