(2009) 10 MAD CK 0150

In the Madras High Court

Case No : Tax Case (Appeal) No. 926 of 2009

Commissioner of Income Tax APPELLANT

Vs

Texmo Precision Castings RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 32(1)

Citation : (2010) 321 ITR 481

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—By formulating the following question of law, the revenue has come up by way of appeal against the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 6-3-2009 passed in I.T.A. No. 2083/Mds/2006 relating to the assessment year 2003-04.

Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in granting additional depreciation on the wind mills installed by the Assessee, even though the Assessee was engaged in the business of production of agricultural motors and pump sets, and the wind mill was not purchased in the context core business, so the exemption contemplated u/s 32(1)(iia) cannot be granted as per the Income Tax Act, 1961?

2. The only issue for consideration in this case is, whether the Commissioner (Appeals) is justified in confirming the disallowance made by the assessing authority on additional depreciation claim on the new wind mills installed by the Assessee by overlooking the conditions prescribed u/s 32(1)(iia) of the Income Tax Act.

3. The facts culled out from the statement of facts of the memorandum of grounds of appeal are as follows:

4. The Assessee is carrying on the business of investment castings for export and also generating and selling electricity from the wind mill. The Assessee has filed its return of income which was processed u/s 143(1) of the Income Tax Act, but later on taken up for scrutiny. During the assessment year, the assessing officer disallowed the additional depreciation claim made by the Assessee for a sum of Rs. 45 lakhs. The assessing officer was of the view that the Assessee was carrying on the business of manufacturing investment castings. The investment castings are products which are produced with high precision using lost wax process and the same were used in various applications like orthopaedic implements (knee-joints), tin and can openers, water pipe joints, etc. and installation of new wind mill has not in any way increased the installed capacity of the Assessees plants and accordingly disallowed the additional depreciation. On appeal, the Assessee has pleaded before the Commissioner (Appeals) that the assessing officer went wrong in not treating the generation of electricity by the windmills as a separate industrial undertaking and thereby erred in concluding that the installation of additional windmills did not increase the capacity of the investment casting, unit of the Assessee. The claim of the Assessee for additional depreciation is based on the increase in the capacity of generation of electricity and not on the increase in capacity of investment castings. The Commissioner (Appeals) also disallowed the claim of the Assessee on the ground that the investment in the windmills is clearly one for the purpose of saving of electricity charges and their installation has in no way increased the installed capacity of the investment castings manufacturing business. The Assessee carried the matter on appeal to the Tribunal. Before the Tribunal it was contended by the Departmental representative that when the Assessee is doing the business of investment castings, then the installation of new windmills did not increase the capacity of the core business of the Assessee and accordingly the Assessee is not entitled for additional depreciation as per Section 32(1)(iia) of the Income Tax Act, 1961. The Tribunal has noted that there is no dispute about the fact that the Assessee has increased the capacity of generation of electricity by more than 50 per cent, but the additional claim of the Assessee has been rejected by the lower authorities on the ground that the said installation of new windmills does not increase the capacity of the Assessees business of manufacturing of investment castings, as well as the new windmills has been used for captive consumption and reduced the electricity charges of the Assessee. It was further noted by the Tribunal that when the Assessee was already having the windmills for generation of power and the installation of two new windmills has increased the capacity or generation of power by more than 50 per cent., then the view taken by the authorities is that the increase of the capacity should have been in the business of investment castings is not correct on the premise that when the Assessee was already generating power for selling to electricity board then the installation of new windmills has definitely increased the capacity of the Assessee in generation of power and is covered under the conditions prescribed u/s 32(1)(iia). In order to give the relief sought for by the Assessee the Tribunal relied on its own decision in the case of Hi Tech Arai

Limited in which the Tribunal has held as follows:

8. After considering the rival submissions and material on record, we note that the assessing officer has disallowed the claim of the Assessee on the ground that the Assessee is basically generating the electricity by wind mills for its own consumption and it is not the business of the Assessee. Therefore, the assesses is not entitled for additional depreciation on wind mills, u/s 32(1)(iia). On appeal, the Commissioner (Appeals) has allowed the claim of the Assessee on the ground that it is not essential that the Assessee is in the business of generation of electricity. But, since the Assessee is generating the electricity by windmills, the conditions of the law are fulfilled for claiming additional depreciation. It is an undisputed fact that after the addition of two units during the period relevant to the assessment year, the capacity of generation of power through wind mills was enhanced by 50 per cent. In our view, when the Central Board of Direct Taxes in its circular has explained the position of captive power unit as well as the generation and generation and distribution of power unit on same footings, then we find no merit in the appeal of the revenue on this issue. Accordingly, we decide this issue against the revenue. The order of the Commissioner (Appeals) is upheld on this issue.

5. It is also brought to our notice that the said decision of Hi Tech Arai Limited was taken on appeal by the revenue to this Court and this Court by order 1-9-2009, in T.C. Appeals Nos. 670 and 671 of 2009 The Commissioner of Income Tax Vs. Hi Tech Arai Limited, , dismissed the appeal filed by the Revenue, in which also, a question of law identical to the one, which is formulated in this case, has been formulated and put in issue before the court and the Division Bench held as follows (page 479):

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 per cent. 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 captive 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 31-3-2002, 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 up to 31-3-2002, 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. As the issue is already decided in favour of the Assessee and against the Revenue in the above judgment, we are of the view that the order of the Tribunal requires no interference at our hands and the appeal has to be dismissed and accordingly the same is dismissed.