IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and
THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

T.C.(Appeal) Nos.921 & 922 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant in both T.Cs.

Vs.

M/s.Cactus Imaging India Pvt. Ltd.,
No.21, South Phase,
SIDCO Industrial Estate,
Guindy, Chennai-32. ... Respondent in both T.Cs.

Appeals filed under Section 260A of Income Tax Act, 1961, against the order dated 16.11.2007 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai, in I.T.A.Nos.1170/Mds/2007 and 2015/Mds/2006 for the assessment years 2004-05 and 2003-04 respectively.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.R.Sivaraman

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C O M M O N J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.T.Ravikumar, learned counsel for the appellant/Revenue and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

2. These tax case appeals, by the Revenue, have been admitted on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Tribunal was right in holding that printers are eligible for 60% depreciation, when the entry in the depreciation table specifically says, "computers including computer software?""*

3. These appeals are directed against the orders passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai in I.T.A.Nos.1170/Mds/2007 and 2015/Mds/2006 dated 16.11.2007, for the assessment years 2004-05 and 2003-04 respectively. The Tribunal, by the impugned judgment, dismissed the appeals filed by the Revenue challenging the orders passed by the Commissioner of Income Tax (Appeals)-III, dated 29.06.2006 and 13.02.2007.

4. The issues, which fell for consideration were whether the depreciation claimed by the respondent/assessee on printers at 60% was right and whether the printers would be included within the term 'computer' as contained in old Appendix I Clause III(5). The said entry states that computers including computer software are eligible for depreciation at 60% on written down value. The assessing officer, while completing the assessment under Section 143(3) of the Income Tax Act, 1961 held that the printers are not the normal printers, but they are high value printers used for printing banners and advertisement materials of large sizes and cannot be treated as a peripheral to a computer and the printer purchased by the petitioner cannot perform any other function as performed by a normal computer. Accordingly, the claim for depreciation at 60% was denied. Before the Commissioner of Income Tax (Appeals), it appears that a video demonstration was conducted before him and upon going through the technical manual of the printers, found that the printer cannot be used without the computer and concluded that it is a part of the computer system. Accordingly, the appeals filed by the assessee were allowed. These orders were affirmed by the Tribunal by pointing out that the printers sought to be treated as computers for the purpose of allowing high rate of depreciation, that is, 60%. It followed

the decision of the Kolkata 'B' Bench of the Tribunal in the case of the **Income Tax Officer v. Samiran Majumdar (2006) 98 ITD 119 (Kol.),** in which the Tribunal had relied on the decision of the Hon'ble Supreme Court in the case of **CIT v. Karnataka Power Corporation (2000) 162 CTR (SC) 249.**

5. Mr.T.Ravikumar, learned counsel for the Revenue strenuously contended that the equipment, which was imported by the petitioner and used by them, is not a normal printer and printer having not been defined under the old appendix (referred supra), the assessing officer was right in rejecting the claim of depreciation at 60%.

6. With regard to how an entry has to be interpreted, the learned counsel referred to the decision of the Hon'ble Division Bench of this Court in the case of **Bimetal Bearings Ltd., v. State of Tamil Nadu (1991) 80 STC 167.** The learned counsel also referred to the decision of the Hon'ble Division Bench of this Court in the case of **Dinamalar v. Income Tax Officer** reported in **(2016) 97 CCH 0004 ChenHC.**

7. We need not labour much to answer the substantial question of law, which has arisen for consideration in the instant case, as in the assessee's own case, the question has been decided in favour of the assessee and the appeal filed by the Revenue, viz., T.C.(A) No.867 of 2014, was dismissed by the Hon'ble Division Bench by judgment dated 18.11.2014. The operative portion of the judgment reads as follows:

> *"4.The issue that arises for consideration is whether the printing machinery, namely printer and scanner, should be treated as an integral part of computer and eligible for 60% depreciation as against 25% as indicated by the Department. There is no dispute on the fact that the printer and scanner is used as an office equipment in business and that is part and parcel of the computer system as decided by the Tribunal in all the subsequent assessment years viz., 2003-04, 2004-05 and 2005-06. The Commissioner of Income Tax (Appeals) as well as the Tribunal have consistently taken the view that the printer and scanner should be treated as an integral part of the system and cannot be used without a computer and depreciation at 60% should be allowed.*
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> *5.We find that this material fact has been consistently followed by the first Appellate Authority and the Tribunal in the assessee's own case and we*

find no material or reason to differ from the said finding of fact. Further more, we find that this issue is a pure question of fact and no question of law arises for consideration in this Tax Case (Appeal). Accordingly, this Tax Case (Appeal) stands dismissed. No costs."

8. From the aforementioned decision, we find, the Division Bench noted the decision of the Commissioner of Income Tax (Appeals) for the assessment years 2003-04 and 2004-05, which was affirmed by the Tribunal and the orders passed by the Tribunal are challenged in the appeals before us. Therefore, we deem it fit and appropriate to consider the submission of the learned counsel for the Revenue. The decision in the case of **Bimetal Bearings Ltd.** (supra) explains as to how an entry has to be interpreted in a taxation statute.

9. The Hon'ble Division Bench took note of the decision of the Hon'ble Supreme Court pointing out that the 'entry' to be interpreted is in a taxing statute; full effect should be given to all words used therein and if a particular article would fall within a description, by the force of words used, it is impermissible to ignore the description, and denote the article under another entry, by a process of reasoning.

10. It was further pointed out that the rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous.

11. By applying the rule of interpretation, we find that the relevant entry under old appendix I Clause III(5) states "computers including computer software" and the Notes under the Appendix defines 'computer software' in Clause 7 to mean any computer program recorded on disc, tape, perforated media or other information storage device. Noteworthy to mention that the notes contained in the appendix, the term "computer" has not been defined. Therefore, as pointed out by the Division Bench in **Bimetal Bearings Ltd.** (supra), if a particular article would fall within the description by the force of words used, it is impermissible to ignore the word description. Thus, going by the usage of the equipment purchased by the petitioner, we have to take a decision.

12. The Commissioner of Income Tax (Appeals) on examining the manner in which the equipment functions by way of

video demonstration, recorded that the printer cannot be used without a computer, that is, it is part of the computer system.

13. In paragraph 6 of the order passed by the Commissioner of Income Tax (Appeals), it has been stated that it can be inferred that the machines "computer printers" under consideration can either be called computers-printers, since a lot of independent functions done by the computers are done by these printers and they can be called an integral part of the computer system. Therefore, the Commissioner of Income Tax (Appeals) came to the conclusion that it should be treated as part of the computer and an accessory to the Computer. This factual finding cannot be dislodged by us, as no material has been placed by the Revenue before this Court.

14. Above all, we should bear in mind, it is a claim for depreciation and if two views are possible, one which is in favour of the assessee should be preferred.

15. Learned counsel for the Revenue relied upon the decision in the case of **Dinamalar** (supra). We find the case arose out of a different factual matrix and the question of law, which fell for

consideration before the Division Bench was whether the claim made by the assessee for depreciation at 80% against the Control Panel Board and transformer by classifying it under head "B", Instrumentation and Monitoring System for monitoring energy flows, in the depreciation table New Appendix-I-III-(8)(ix)B, is right. In the factual scenario, the Hon'ble Division Bench held that the machinery will not fall under the said category viz., under the head Instrumentation and Monitoring for monitoring energy flow and therefore, we find that the decision in the case of **Dinamalar** (supra) is clearly distinguishable on facts.

16. Further more, we note that in so far as the appeal filed by the Revenue in the assessee's own case for the assessment year 2005-06 in T.C.(A) No.543 of 2009 is concerned, the said appeal was dismissed as withdrawn by the Hon'ble Division Bench by judgment dated 21.01.2016 on account of low tax effect.

17. Be that as it may, the concurrent findings of the first appellate authority as affirmed by the Tribunal holds that the claim by the assessee at 60% is acceptable. Thus, for the above reasons, we find that since in respect of percentage on depreciation claimed in

respect of the very same machinery has been permitted for the earlier years and affirmed by the Division Bench, the Revenue cannot take a difference stand.

18. For all the above reasons, the appeals are dismissed and the substantial question of law framed for consideration is answered in favour of the assessee and against the Revenue. No costs.

(T.S.S., J.) & (N.S.S., J.)

16.04.2018

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Index : Yes / No
Speaking/Non-Speaking Order

To

1.The Commissioner of Income Tax-I,
Chennai.

2.The Income Tax Appellate Tribunal,
Madras "B" Bench, Chennai.

3.The Commissioner of Income-tax (Appeals)-III,
Chennai.

T.S.SIVAGNANAM, J.
and
N.SESHASAYEE, J.

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