Cit Vs. Alankar Borewells

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Court : Chennai

Decided On : Dec-03-2001

Reported in : (2002)177CTR(Mad)560

Appeal No. : Tax Case No. 59 of 1999 3 December 2001 A.Y. 1987-88

Appellant : Cit

Respondent : Alankar Borewells

Advocate for Pet/Ap. : Mrs. Chitra Venkataraman, *for the Revenue* None, *for the Assessee*

Judgement :

A.K. Rajan, J.

The question referred to us is as follows :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the decision of the Dy. Commissioner (Appeals) cancelling the order under section 154 passed by the assessing officer restricting the rate of depreciation in respect of rigs and compressors in the light of the Madras High Court's decision in the case of CIT v. Tamil Nadu Agro Industries Corporation : [1991]192ITR108(Mad) .

2. The assessment year is 1987-88. In the initial assessment the assessing officer allowed depreciation on the rigs and compressors used by the assessee which is engaged in the business of digging borewells at the rate of 30 per cent. The assessing officer subsequently initiated action under section 154 and limited the depreciation to 15 per cent.

3. The assessee did not dispute the fact that the depreciation properly allowable on rigs and compressors is only fifteen per cent, but contended in the appeal preferred by it that the issue was debatable and, therefore, rectification should not have been resorted to. That stand of the assessee was upheld by the appellate authority as also by the Tribunal. Subsequently, this court in the case of CIT v. Tamil Nadu Agro Industries Corporation : [1991]192ITR108(Mad) decided on 26-3-1991, held that the depreciation allowable in such cases in only 15 per cent.

4. Counsel for the revenue submitted that in the light of the decision of this court, though rendered subsequently, it must be held that there was an error apparent in the original assessment and, therefore, the rectification was required to be upheld.

5. This court in the case of Dr. Rajah Sir Muthiah Chettiar (Decd) by LR v. CIT : [1999]238ITR505(Mad) while considering the power of the Tribunal to decline to rectify its order, held that if the effect of allowing the application for rectification is to bring about a result which would not be in conformity with the substantive law, the Tribunal would be within its power to decline the application. In that case it was found that the effect of the rectification which the assessing officer had effected based on the audit objection and which had been upheld by the Tribunal was to make the assessment conform to the requirement of the substantive law.

6. In this case also, as a result of the rectification effected, the assessee has been granted depreciation in accordance with what the law stipulates. The rectification was made by the assessing officer as he had apparently not noticed the proper provision under which the assessee could be allowed depreciation for its rigs and compressors. The extent of the depreciation actually allowed after the rectification was in conformity with the law which law has been subsequently declared by the decision of this court in CIT v. Tamil Nadu Agro Industries Corporation (supra).

7. We, therefore, answer the question in favour of the revenue and against the assessee.