IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

I.T.A. No. 1939/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	M/s Prabhu Spinning Mills (P) Ltd., 207/86, Mangalam Road, Tirupur – 641 604. PAN : AABCP0750E
(Appellant)		(Respondent)

I.T.A. No. 1940/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	Smt. V. Dhanalakshmi, 207/86, Mangalam Road, Tirupur – 641 604. PAN : AANPV5412C
(Appellant)		(Respondent)

I.T.A. No. 1941/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	M/s Veda Spinning (P) Ltd., 207/86, Mangalam Road, Karuvampalayam, Tirupur – 641 604. PAN : AABCV2433Q
(Appellant)		(Respondent)

I.T.A. No. 1942/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	Shri P.S. Veluswamy, 207/86, Mangalam Road, Karuvampalayam, Tirupur – 641 604. PAN : ABLPV6651Q
(Appellant)		(Respondent)

I.T.A. No. 1943/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	M/s Excel Cotspin India (P) Ltd., 18, Kannapiran Colony, B.S. Sundaram Road, Tirupur. PAN : AAACE9365K
(Appellant)		(Respondent)

I.T.A. No. 1944/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	Smt. C.K. Indira, 207/86, Mangalam Road, Karuvampalayam, Tirupur – 641 604. PAN : AAEPI7557A
(Appellant)		(Respondent)

I.T.A. No. 1945/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	M/s Sri Matha Spinning Mills (P) Ltd., 207/86, Mangalam Road, Karuvampalayam, Tirupur – 641 604. PAN : AAECS1881G
(Appellant)		(Respondent)

I.T.A. No. 1946/Mds/2011
Assessment Year : 2007-08

The Assistant Commissioner of Income Tax, Company Circle, Tirupur.	v.	M/s India Dyeing Mills (P) Ltd., Door No.10, 12, Kumar Nagar South, II Street, Tirupur – 641 603. PAN : AAECS1881G
(Appellant)		(Respondent)

Appellant by : Shri Anirudh Rai, CIT-DR
Respondents by : Shri N. Vijay Kumar, CA

Date of Hearing : 15.05.2012
Date of Pronouncement : 15.05.2012

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

These are appeals filed by the Revenue against the orders of Commissioner of Income Tax (Appeals)-II, Coimbatore, in respect of the concerned assessees, for assessment year 2007-08. Since similar issues are involved and common grounds have been raised in all the appeals of the Revenue, we dispose of the appeals by a consolidated order.

2. The common grounds appearing in all the appeals are reproduced here:-

2. The learned Commissioner of Income Tax (Appeals) erred in holding that the assessee is entitled to deduction under Section 80-IA.

3. The learned Commissioner of Income Tax (Appeals) erred in holding that assessment year 2005-06 is the first initial assessment year in which the assessee had claimed the deduction under Section 80-IA and therefore the unabsorbed depreciation of the earlier years which had already been absorbed cannot be notionally carried forward and taken into consideration for computing deduction u/s 80-IA.

4. The learned Commissioner of Income Tax (Appeals) should have observed that as per the provisions of Section 80-IA(2) the assessee can opt for deduction of any ten consecutive years out of 15 years taken from the first year in which the undertaking enterprise develops and begins to operate infrastructural facility.

5. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that as per provisions of Section 80-IA(5) the undertaking eligible for deduction u/s 80-IA should be treated as only source of income for computing the quantum of deduction.

6. The learned Commissioner of Income Tax (Appeals) should have observed that since sub-section 5 of section 80-IA starts with a non obstante clause, the restriction put in sub-section 5 will prevail and deduction u/s 80-IA has to be restricted accordingly.

3. When the appeals came up before us, A.R. submitted that the CIT(Appeals) followed the decision of Hon'ble jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. v. ACIT (340 ITR 477) and there was nothing on record to show that the said decision of jurisdictional High Court has been overruled by Hon'ble Apex Court.

4. Per contra, learned D.R. submitted that Revenue had moved in appeal before Hon'ble Apex Court against the decision of jurisdictional High Court in Velayudhaswamy Spinning Mills (P) Ltd.'s case (supra).

5. We have perused the orders and heard the rival submissions. In all these cases, assessees had opted a different year as their initial assessment year other than the year in which they had commenced the operation of the windmill. In the earlier years, prior to such initial assessment year, there were losses from the windmill, but such losses were set off against their profits from the business. In such earlier years, assessees had not claimed any deduction under Section 80-IA of Income-tax Act, 1961 (in short 'the Act'). Since assessees chose a different year as initial assessment year for claiming deduction under Section 80-IA of the Act, it did not set off any earlier year losses which already stood absorbed against earlier year's income. Assessing Officer, however, held that such losses had to be set off notionally before allowing deduction under Section 80-IA of the Act. On assessees' appeals, CIT(Appeals) held in favour of assessees relying on the decision of Hon'ble jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. (supra). The decision of Hon'ble jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. (supra) is clear that notional losses which already

stood set off against other income in the earlier years could not be carried forward and set off against profits or income of initial/subsequent years in respect of windmill. We are, therefore, of the opinion that the CIT(Appeals) was justified in relying on the decision of Hon'ble jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. (supra). No interference is called for.

6. In the result, all the appeals filed by the Revenue are dismissed.

The order was pronounced in the Court on Tuesday, the 15th of May, 2012, at Chennai.

sd/-	sd/-
(Challa Nagendra Prasad)	(Abraham P. George)
Judicial Member	Accountant Member

Chennai,
Dated the 15th May, 2012.

Kri.

Copy to:
(1) Appellant
(2) Respondents
(3) CIT(A)-II, Coimbatore
(4) CIT-III, Coimbatore
(5) D.R.
(6) Guard file