

ITEM NO.8

COURT NO.6

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19495/2012

(Arising out of impugned final judgment and order dated 08-08-2011 in TCA No. 162/2005 passed by the High Court Of Judicature At Madras)

C.I.T-IV, COIBATORE

Petitioner(s)

VERSUS

M/S SHIVA DISTILLERIES LTD.

Respondent(s)

Date : 30-08-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Petitioner(s) Mr. Maninder Singh, ASG
Mr. Radha Krishnan, Sr. Adv.
Mr. T.N. Razdan, Adv.
Mr. T.M. Singh, Adv.
Ms. Anil Katiyar, AORFor Respondent(s) Mr. Arvind Datar, Sr. Adv.
Ms. Radha Rangaswamy, AORUPON hearing the counsel the Court made the following
O R D E RThe following two main issues arise for consideration in this
petition:

1. Whether the High Court was right in holding that the assessee is entitled to depreciation in respect of new textile unit or the entire transitional period of 21 months treating the business as an extension of the earlier business of trading in yarn, when the new textile unit started commercial production only from 15.02.1989, and the depreciation is applicable in the ratio of 2:21.

2. Whether proviso of Section 3 of the Act is applicable

on the facts of the case.

Insofar as first issue is concerned, it arose because of the reason that the assessee herein originally had his accounts made up from 01.07.1987 to 30.06.1989. However, on account of amendment brought forth to Section 3 of the Income Tax Act, 1961 ('the Act') by Direct Tax Laws (Amendment) Act, 1989 making it effective from 01.04.1989, the assessee had to close its accounts by 31.03.1989. In this manner, from 01.07.1987 to 31.03.1989, the period of 21 months was covered as "previous year" relevant to the Assessment Year 1989-90 for which the return was filed by the assessee. The assessee claimed depreciation on assets for the aforesaid period of 21 months as "previous year". The claim of the assessee was allowed originally by the Assessing Officer. However, the Commissioner of Income Tax, in exercise of his jurisdiction under Section 263 of the Act, revised the order of assessment as regards the depreciation claimed by the assessee, which was granted at the enhanced rate by applying the fraction of 21/12 as per Rule 5 of X Schedule of the Act. This order was challenged by the assessee by filing an appeal before the Income Tax Appellate Tribunal ('ITAT'), which was allowed, and the order of the ITAT has been upheld by the High Court as well.

Without going into the legality of the matter, it comes on record that the assessment is tax neutral inasmuch as if the depreciation is allowed at lesser rate in the year in question it would be more in the subsequent years. It is also a matter of record that since the respondent is a company incorporated under

the Companies Act, 1956, rate of tax remains the same during all these years. In fact, Mr. Arvind P. Datar, learned senior counsel appearing on behalf of the respondent, had given a chart, showing these calculations to the learned counsel for the Department. The same is examined by the Department at appropriate level and vide communication dated 10.03.2017 addressed to the Income Tax Officer (L & R), Supreme Court Cell-I, the aforesaid aspect has been confirmed. In view thereof, it may not even necessary to deal with the matter on merits.

The Special Leave Petition is dismissed.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER

(MADHU NARULA)
COURT MASTER