

Merely claiming of lessor 100% Depreciation on Asset can't make the asset as 'previously used' to disqualify the asset from claiming Deduction

Fact of the Case

1. In the instant case the assessee-company, Sundaram Non-Conventional Energy Systems Limited is engaged in the business of generation and distribution of electricity and for the assessment years under consideration
2. They filed their return of income and claimed deduction under Section 80-IA of the Act. The said claim was rejected by the Assessing Officer on the ground that the assessee had leased out the windmills and it amounts to transfer and the windmills, which were leased out, were previously used by the lessor-company, who had claimed 100% depreciation and therefore, the windmills having been previously used for any purpose, the assessee does not fulfill the conditions stipulated in sub-section (3) of Section 80-IA of the Act.
3. Thus, the two conditions, which are required to be cumulatively fulfilled are that the undertaking should not be formed by splitting up or the reconstruction of a business already in existence.
4. The second condition is that the undertaking is not formed by the transfer to a new business of machinery or plant previously used for any purpose. It is not in dispute that the windmills have been leased out by the assessee-company.

Decisions of the Case

1. The division bench of Justice T.S. Sivagnanam and Justice Sathi Kumar Sukumara Kurup held that a lease transaction would not amount to a transfer and merely because the lessor had claimed 100% depreciation on the said asset cannot make the asset as 'previously used' to disqualify the asset from claiming deduction.
2. The Madras High Court held that, hiring of machineries from sister concern would not amount to transfer to a new business.