IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

T.C.A. NOS. 206 & 207 OF 2015
AND
M.P. NO. 1 Of 2015

The Commissioner of Income Tax
Chennai. ... Appellant

- Vs -

M/s.Amalgamation Valeo Clutch P Ltd.
134, 'J' Gardens
GNR Road, Chennai 600 110. ... Respondent

Appeals filed under Section 260-A of the Income Tax Act against the order dated 13.10.2011 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench, made in ITA No.242/Mds/2011 and ITA No.243/Mds/2011 against the Order of the Commissioner of Income Tax, (Appeals)-III, Chennai, made in ITA.No.278/08-09/A.III - Order dated 26.11.2010 and against the order of the Commissioner of Income Tax (Appeals)-III, Chennai, made in ITA.No.146/07-08/A.III order dated 26.11.2010, and against the order of the Deputy Commissioner of Income Tax Company Circle I(1), Chennai, made in PA/GIR.No.AAACA9038P/AX3-588 & AAACA9038P/AX3-588 order dated 28.11.2008 and 30.08.2007 for the Assessment years 2006-07 & 2005-06 respectively.(in TCA Nos.206 & 207 of 2015)

For Appellant : Mr. T.Ravikumar

For Respondent : Mr. R.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeals filed by it, the appellant/Revenue is before this Court by filing the present appeals raising the following questions of law :-

> "1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the allowability of depreciation on technical know-how is to be allowed even though the same was not put to use?
>
> 2) Whether the finding of the Tribunal is proper since as per assessee's own claim the intangible assets was under construction or its work is in progress and cannot form part of fixed schedule till it is converted into tangible assets fit for use and put to use?"

2. The facts, in a nutshell, are as hereunder :-

The assessee is engaged in the business of manufacturing, trading and sale of clutches. The assessee filed its return of income for the assessment years 2005-2006 and 2006-2007, disclosing total income of Rs.12,75,64,358/= and Rs.23,41,24,562/= respectively, which were processed under Section 143 (1). The case was, thereafter, selected for scrutiny and notice under Section 143 (2) was issued. One of the major issues before the Assessing Officer related to depreciation on technical know-how. The assessee claimed depreciation on technical know-how at the rate of 25% during the year. However, the assessing officer held that the fee towards the technical know-how has not been paid during the relevant year as is evident from the notings made in the account books by the assessee stating that the balance technical know-how fee has not yet become due, as the technical know-how is in progress. In such view of the matter, the Assessing Officer recomputed the income and arrived at the taxable income for the respective assessment years at Rs.16,15,24,359/= and Rs.23,83,47,161/= respectively.

3. Aggrieved against the said orders, the assessee preferred appeals before the CIT (Appeals). The CIT (Appeals), following the decision of the Tribunal in assessee's own case in ITA No.35 of 2008 and M.P. No.45 of 2010, allowed the appeals and held in favour of the assessee. The Department, aggrieved by the said order, preferred appeals to the Tribunal.

4. The Tribunal, on a consideration of the issue, relying upon a decision of this Court in TC (A) No.1115 of 2010 dated 10.01.2011 in assessee's own case, which in turn relied on a decision of this Court in TCA No.1009 of 2010, held that the assessee is entitled to depreciation on technical know-how and, accordingly, dismissed the appeals filed by the Department. Aggrieved by the said order, the Department is before this Court by filing the present appeals.

5. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondent/assessee and perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

6. We find from the order of the Tribunal, the Tribunal has relied on a judgment of this Court in TCA No.1115 of 2010 dated 10.01.2011 and held against the Revenue. We further find from the order passed in TCA No.1115 of 2010, reference has been made to an order passed by this Court in TCA No.1009 of 2010, wherein challenge was made as to whether the Tribunal has powers to rectify the mistake apparent on record in exercise of powers under Section 254 (2) of the Act and directing the Assessing Officer to grant depreciation on the actual cost of acquisition of technical know-how.

7. In the case of Commissioner of Income Tax-I, Chennai - Vs - M/s.Amalgamations Valeo Clutch Ltd. (TCA No.1009 of 2010 dated 08.11.2010), which pertains to the very same assessee, the power of the Tribunal to rectify a mistake by reviewing its own order by way of a rectification application in exercise of powers under Section 254 (2) and for direction on the Assessing Officer to grant depreciation on the actual cost of acquisition of technical know-how, was considered and this Court held that the Tribunal had not exceeded its jurisdiction in rectifying the mistake and, accordingly, answered the issue in favour of the assessee and against the Revenue. For better clarity, the said portion of the order is extracted hereinbelow :-

> "5. In such circumstances, when the Tribunal in its earlier order dated 9.10.2009 did not consider the said legal position, when it was brought to its notice in the rectification application, it was bound to correct the mistake in the application filed under Section 254 (2) of the Act. Therefore, such a rectification carried out by the Tribunal in its order dated 9.10.2009 by the order impugned in this appeal cannot be held to be in violation of Section 254 (2) of the Act nor can it be held that by carrying out

such a rectification, it exceeded its jurisdiction by going into the merits of the issue once over again. We therefore do not find any flaw and consequently there is no question of law much less substantial question of law to be examined in this appeal. The appeal fails and the same is dismissed. No costs."

8. A conjoint reading of both the orders, viz., T.C.A. Nos.1009 of 2010 and 1115 of 2010, would reveal that the issue relating to grant of depreciation on the actual cost of acquisition of technical know-how has already been answered by this Court in the affirmative in favour of the assessee and, therefore, the Revenue can no longer urge the same issue once over. Therefore, no question of law, much less substantial question of law arise for consideration in these appeals and, accordingly, the same deserves to be dismissed.

9. For the reasons aforesaid, these appeals fail and the same are dismissed. Consequently connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

GLN Sub Assistant Registrar

To

1. The Commissioner of Income Tax-I
Chennai.

2. The Income Tax Appellate Tribunal
Chennai 'D' Bench,
Chennai.

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

4. The Deputy Commissioner of Income Tax
Company Circle I(1), Chennai.

T.C.A. NOS. 206 & 207 OF 2015

CA(CO)
CA(25/08/2015)