IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NO. 1078 OF 2007

Commissioner of Income Tax
Chennai. .. Appellant

- Vs -

Mangal Tirth Estates Ltd.
769, Mount Road
Chennai 600 002. .. Respondent

Appeal filed under Section 260-A of the Income Tax Act, against the order dated 28.02.2007, passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, made in ITA No.2927/Mds/04.

For Appellant : Mr. T.R.Senthil Kumar

For Respondents : Mr. Venkatnarayanan

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

The Revenue, aggrieved by the order passed by the Income Tax Appellate Tribunal in dismissing the appeal filed by it, is before this Court by filing the present appeal. This Court, vide order dated 17.07.2007, admitted the appeal on the following substantial questions of law:-

"1) Whether on the facts and in the circumstances of the case, the

Tribunal was right in law in holding that the amenities charges paid for central air conditioning of the shops sold should be treated only as an advance and not as a trading receipt?

2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipt for allotment of car park should be treated as a returnable deposit when as per the sale deed, the ownership of the shop and the car park are inseparable?

3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the tax deducted at source and advance tax paid?

4) Whether on the facts and in the circumstances of the case, MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1?"

2. The assessee was engaged in the business of construction and sale of multi storeyed office-cum-shopping complex. For the assessment year 2001-2002, the assessing officer, inter alia, made an addition on account of amenity charges to the tune of Rs.79.26 Lakhs paid by the buyers for air conditioning the shops and also made additions on the amount received for car park. The assessing officer calculated interest payable under Sections 234B and 234C and gave credit for MAT thereafter. Aggrieved by the said assessment, the assessee preferred appeal before the CIT (Appeals), who allowed the appeal following the Tribunal's order for assessment year 1990-1991 and 1992-1993 in ITA Nos.1565 and 2037/Mds/94 with respect to air conditioning and car park and also directed the assessing officer to set off the MAT credit before calculation of interest under Sections 234B and 234C.

3. Aggrieved by the said order of the CIT (Appeals), the Revenue preferred appeal before the Income Tax Appellate Tribunal. The Tribunal also, by following its own order in

assessee's own case in ITA Nos.1565 and 2037/Mds/94 for assessment year 1990-1991 and 1992-1993 with regard to air conditioning and car park and by following its own order in the case of Chemplast Sanmar, held that the assessee is entitled to MAT credit first before charging of interest under Sections 234B and 234C, allowed the appeal. Aggrieved by the said order of the Tribunal, the Revenue is before this Court by filing the present appeal.

3. Heard the learned standing counsel appearing for the Department and the learned counsel appearing for the respondent.

4. It is submitted by the counsel on either side that the first two substantial questions of law is squarely covered in favour of the Department in the assessee's own case reported in ***303 ITR 366 (Commissioner of Income Tax – Vs – Mangal Tirth Estates Ltd.)***, wherein identical questions of law have been decided in favour of the Revenue. Accordingly, ***substantial questions of law Nos. 1 and 2 are answered in favour of the Revenue and against the assessee***.

5. Insofar as the 3rd and 4th substantial questions of law raised with regard to demand made by the Department claiming interest under Sections 234B and 234C before giving credit for MAT (Minimum Alternative Tax), it is submitted by the learned counsel on either side that the above two issues have been decided in favour of the assessee by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax – Vs – Tulsyan NEC Ltd. (330 ITR 226)***, wherein the Supreme Court held as under :-

> *"To answer, we need to look at section 234B. Under that section, "assessed tax" means the tax on the total income determined under section 143(1) or on regular assessment under section 143(3) as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which*

is taken into account in computing such total income. The definition, thus, at the relevant time excluded the MAT credit for arriving at assessed tax. This led to immense hardship. The position which emerged was that due to omission on one hand the MAT credit was available for set off for five years under section 115JAA but the same was not available for set off while calculating advance tax. This dichotomy was more spelt out because section 115JAA did not provide for payment of interest on the MAT credit. To avoid this situation, Parliament amended Explanation 1 to section 234B by the Finance Act, 2006 with effect from April 1, 2007 to provide along with tax deducted or collected at source, the MAT credit under section 115JAA also to be excluded while calculating assessed tax.

From the above, it is evident that any tax paid in advance/pre-assessed tax paid can be taken into account in computing the tax payable subject to one caveat, viz, that where the assessee on the basis of self-computation unilaterally claims set off or the MAT credit, the assessee does so at its risk as in case it is ultimately found that the amount of tax credit availed of was not lawfully available, the assessee would be exposed to levy of interest under section 234B on the shortfall in the payment of advance tax. We reiterate that we cannot accept the case of the Department because it would mean that even if the assessee does not have to pay advance tax in the current year, because of his brought forward MAT credit balance, he would nevertheless be required to pay advance tax, and if he fails, interest under section 234B would be chargeable. The consequence of adopting the case of the Department would mean that the MAT credit would lapse after five succeeding assessment years under section 115JAA(3) ; that no interest would be payable on such credit by the Government under the proviso to section 115JAA(2) and that the assessee would be liable to pay interest under sections 234B and 234C on the shortfall in the payment of advance tax despite existence of the MAT credit standing to the account of the assessee. Thus, despite the MAT credit standing to the account of the assessee, the liability of the assessee gets increased instead of it getting reduced."

Accordingly, ***substantial questions of law Nos.3 and 4 are answered in favour of the***

assessee and against the Revenue.

6. In the result, the appeal stands ordered accordingly. However, in the circumstances, there shall be no order as to costs.

(R.S.J.) **(R.K.J.)**

19.01.2015

Index : Yes/No

Internet : Yes/No

GLN

To

1. Commissioner of Income Tax
   Chennai.

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

<u>R.SUDHAKAR, J.</u>
AND
<u>R.KARUPPIAH, J.</u>

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