IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:. 19.10.2016

CORAM:

THE HON'BLE MR.JUSTICE NOOTY RAMAMOHANA RAO
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.1096 & 1098 of 2007

Tax Case Appeal No.1096 of 2007

Commissioner of Income Tax,
Chennai ... Appellant

Versus

M/s. TCI Seaways Ltd.,
IV Floor, Gee Gee Crystal,
92, Dr. Radha Krishnan Salai,
Mylapore,
Chennai 600 004. ... Respondent

Appeal against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 15.09.2006 , passed in ITA No.529/Mds/2005 in respect of the assessment year 2001-02..

Tax Case Appeal No.1098 of 2007

Commissioner of Income Tax,
Chennai ... Appellant

Versus

M/s. TCI Seaways Ltd.,
IV Floor, Gee Gee Crystal,
92, Dr. Radha Krishnan Salai,
Mylapore,
Chennai 600 004. ... Respondent

Prayer in TCA.No.1096 of 2007:Appeal against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 15.09.2006 , passed in ITA No.529/Mds/2005 in respect of assessment year 2001-02.

Prayer in TCA.No.1098 of 2007: Appeal against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 15.09.2006 , passed in ITA No.2296/Mds/2005 in respect of assessment year 2001-02.

For Appellant in both appeals	:	Mr.M. Swaminathan
For Respondent in both appeals	:	Mr. J.R.K. Bhavanantham

J U D G M E N T

(Judgment of the Court was delivered by Anita Sumanth, J.)

These Tax Case Appeals against the revenue, challenge the orders of Income Tax Appellate Tribunal passed in ITA No.529/Mds/2005 in respect of assessment year 2001-02 and ITA No.2296/Mds/2005 in respect of assessment year 2001-02, dated 15.09.2006.

2. The substantial question of laws raised in the above appeals are as follows:-

> “ 1. 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 levying interest under section 234B and 234C of the Income Tax Act, 1961?
>
> 2. Whether, on the facts and circumstances of the case, the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1?”

3. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the assessee respondent.

4. We notice that the issues raised in the substantial question of law in the above appeals have been considered and the question was decided in favour of the assessee by the judgment of this Court in **Commissioner of Income Tax Vs. Chemplast Sanmar Ltd, reported in (2009) 314 ITR 23,** affirmed by the Honourable Supreme Court in the case reported in **Commissioner of Income Tax Vs. Tulsyan Nec Ltd., reported in (2011) 330 ITR 226 (SC),** wherein, the Honourable Supreme Court has specifically noted as follows;

> “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.”

5. In the light of the settled law as aforesaid, the substantial questions are answered against the department and in favour of the assessee. The tax case appeals stand rejected/dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

[N.R.R.,J.] [A.S.M.,J.]
19.10.2016

msr
Index:Yes/No
Internet:YesNo
To
The Income Tax Appellate Tribunal,
Madras “B” Bench, Chennai.+

NOOTY RAMAMOHANA RAO, J.
&
Dr. ANITA SUMANTH, J.

Tax Case Appeal Nos.
1096 to 1098 of 2007

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