IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2016

Coram:

The Hon'ble Mr.Justice ***V.RAMASUBRAMANIAN***
and
The Hon'ble Mr.Justice ***N.KIRUBAKARAN***

Tax Case Appeal No.1527 of 2007

Commissioner of Income Tax
Chennai. ... Appellant

Versus

M/s. S.M.Apparels P. Ltd.,
Velacherry Main Road,
Chennai 600 042. ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the Order dated 9.2.2007 passed by the Income tax Appellate Tribunal, Madras 'C' Bench, Chennai in ITA No.2437/Mds./2004.

For Appellant : Mr.Joseph George

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was made by V.Ramasubramanian, J

The Tax Appeal filed by the Revenue, challenging an order passed by the Income Tax Appellate Tribunal, Madras, "C" Bench, was admitted on 18.12.2007 on the following substantial question of law:-

> *"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assumption of jurisdiction u/s 263 of the Income Tax Act, by the Commissioner of Income Tax was invalid? "*

2. Heard Mr.Joseph George, learned counsel for the appellant. The learned counsel entered appearance for the Respondent/Assessee, reported no instructions and hence the name of the Respondent/ Assessee is printed in the cause list. There is no representation for them.

3. The Assessee filed a Return of Income for the Assessment Year 2001-02, declaring a nil taxable income under regular method and a MAT income under Section 115JB to the tune of Rs.14,04,990/-. The case was taken up for scrutiny and an Order of Assessment was passed on 21.4.2003.

4. However, the Commissioner of Income Tax, Chennai-III, issued a show cause notice on 4.4.2004 under Section 263 of the Act and after giving opportunity, passed an order dated 3.8.2004, making certain additions and certain deletions.

5. The order of the Commissioner of Income Tax, Chennai-III, was challenged by the Assessee before the Tribunal, on the ground that the twin conditions imposed under Section 263 of the Act were

not satisfied. Agreeing with the said contention, the Tribunal allowed the appeal of the Assessee. Hence, the Revenue is before us.

6. A look at the order passed under Section 263 of the Act would show that the Commissioner found fault with the Original Assessment Order, for having netted off the interest received amounting to Rs.9,47,657.22 from the total interest paid to the tune of more than Rs.1,68,56,510.65. Similarly, the Commissioner also found fault with the 10B computation made by the Assessee.

7. The net result of the above mistakes, was that there should have been an addition to the tune of more than Rs.80 lakhs.

8. The question whether the netting off the interest to the tune of Rs.9,47,657.22 was correct or not and the question as to whether the Section 10B computation was right or wrong, was not gone into by the Tribunal. If what the Commissioner says is correct, the order of the Assessing Officer was obviously wrong. Therefore, the first requirement under Section 263 of the Act stands satisfied.

9. If on facts what the Commissioner stated was correct that the total taxable income should be more than what is reflected, then the error that crept in to the order of the Assessing Officer, has obviously become prejudicial to the interest of the Revenue. Therefore, the finding of the Tribunal that the twin requirements were satisfied, is

completely perverse. Interestingly, the Tribunal has nullified the decision of the Supreme Court in ***M/s. Malabar Industrial Company v. Commissioner of Income Tax [243 ITR 83]*** and drew a wrong conclusion from the ratio laid down therein.

10. Therefore, the Tax Case Appeal is allowed and the question of law is answered in favour of the Department. The matter is remitted back to the Tribunal for an order on the merits. No costs.

(V.R.S., J) (N.K.K., J)
22.02.2016

Index : Yes or No
Internet : Yes or No

To
The Income tax Appellate Tribunal, Madras 'C' Bench, Chennai

V.RAMASUBRAMAN, J
AND
N.KIRUBAKARAN, J

gr

T.C.(A) No.1527 of 2007

22.02.2016