IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.383 and 380 of 2007

Commissioner of Income Tax,
Chennai. .. Appellant

Vs.

M/s. Pradeep Industries,
23, Chengalvarayan Street,
Triplicane, Chennai-5. .. Respondent

Tax Case Appeal No.383 of 2007 is filed under Section 260-A of the Income Tax Act, 1961, against the order dated 30.11.2006, passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in ITA No.938/Mds/2005, for the Assessment Year 2001-2002.

For Appellant : Mr.T.Ravikumar,
Senior Standing Counsel (Income Tax)
For Respondent : Mr.S.Sridhar.

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COMMON JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao, J.)

This Appeal is preferred under Section 260-A of the Income Tax Act, 1961, by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in ITA No.938/Mds/2005, for the Assessment Year 2001-2002.

2. The following substantial three questions of law have been raised for our consideration in this appeal:-

(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that sale of scrap do not form part of the turnover, for the purpose of calculation of deduction under Section 80HHC?

(ii) Whether the Tribunal was right in holding that although entire scrap sales is included in the business profit, and explanation (baa) would not apply to it, it would not form part of the total turnover for the purpose of calculation of deduction under Section 80HHC?

(iii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that only the net interest received is to be considered for deducting 90% of interest income in compliance of explanation (baa) to Section 80HHC of the Income Tax Act?

3. Heard Shri T.Ravikumar, learned Senior Standing Counsel for the Income Tax Department and Shri S.Sridhar, learned counsel for the Respondent.

4. Though the first substantial question of law framed has merely used "turnover" but nonetheless, Shri T.Ravikumar, learned Senior Standing Counsel for the Income Tax Department has pointed out that it is intended to be the "total turnover". Accordingly, we treat that the first substantial question of law is concerning the "total turnover" but not turnover merely.

5. The first two substantial questions of law incidentally have fallen for

consideration of the Supreme Court in **Commissioner of Income Tax-VII vs. Punjab Stainless Industries - (2014) 364 ITR 144 (SC)**. The Supreme Court had answered these two substantial questions of law in favour of the assessee and against the Revenue. In view of the finality achieved, the first two substantial questions of law are accordingly answered against the Revenue and in favour of the assessee.

6. In so far as the third substantial question of law is concerned, the same substantial question of law has fallen for consideration before the Supreme Court in **ASCG Associated Capsules Private Limited vs. Commissioner of Income Tax - (2012) 247 CTR-372**, wherein it was held that 90% of the net amount of any receipt of the nature mentioned in Clause (1) of Explanation (baa) of Section 80HHC, which is actually included in the profits of the assessee, is to be deducted from the profits of the assessee for determining the "profits of the business". Hence, the third substantial question of law formulated for our consideration in this appeal stands concluded by the aforementioned judgment of the Supreme Court and accordingly, TCA No.383 of 2007 stands dismissed. No costs.

7. Tax Case Appeal No.380 of 2007 is filed against the order dated 05.10.2007, passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in M.P.No.0087/Mds/2007 in ITA No.938/Mds/2005.

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

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8. The following substantial question of law has been raised for our consideration in this appeal:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that recalling an order passed without consideration of a specific ground raised would amount to review of the order and not rectification u/sec. 254(2) of the Income Tax Act?

9. In view of the Judgment rendered by us in TCA No.383 of 2007, relating to the same assessee, the substantial question of law raised in this appeal has since become purely academic and hence this Tax Case Appeal also stands dismissed while preserving the question for examination in an appropriate case. No costs.

(N.R.R.,J.) (A.S.M.,J.)
16.11.2016

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T.C.A.Nos. 383 and 380 of 2007