IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal No. 2213 of 2006

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

M/s. Q-Max Test Technologies P. Ltd.,
North Wing, III Floor
Level 4. D. No.6, Elcot Avenue
239 I.T. Highway,
Sholinganallur
Chennai – 600 119. .. Respondent

Prayer: This Memorandum of Appeal is filed under Section 260A of the Income Tax Act, 1916 against the orders of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 23.12.2005 passed in I.T.A.No.918 (Mds)/2005.

For Appellant : Ms. Hema Muralikrishnan
Standing Counsel for IT

For Respondent : Mr.R. Kumar
for Mr. T.N. Seetharaman

<u>J U D G M E N T</u>

(Judgment of the Court was made by **S.Manikumar,J)**

This Tax Case Appeal has been filed against the orders of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 23.12.2005 passed in I.T.A.No.918 (Mds)/2005.

2. The substantial questions of law framed by this Court on 05.09.2006, are as follows :-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the provisions of Section 2(22)(e) treating a loan or advance as a deemed dividend if the loan is given as part of a contractual obligation ?
2. Whether on the facts and circumstances of the case, the Tribunal was right in interpreting the section on the basis of intention of the legislature, when the words of the section are clear and unambiguous ?
3. Whether on the facts and circumstances of the case, the Tribunal was right in looking at the transaction between the two companies in other years to arrive at the conclusion that the loan granted in the relevant financial year does not amount to deemed dividend under Section 2(22)(e) of the

Act ?

3. On this day, when the matter came up for hearing, Ms. Hema Muralikrishnan, learned Standing Counsel for Income Tax Department submitted that the tax limit involved in this appeal falls within the Circular No. 21/2015 [F. No. 279/Misc.142/2007-ITJ (PT.)] dated 10.12.2015. She also submitted that the decision rendered in I.T.A. No.918/Mds./2005 dated 23.12.2005 is followed by the assessee's own case in T.C.A. Nos. 174 to 178 of 2008. Learned counsel for the Revenue also submitted that the TCA. Nos. 174 to 178 of 2008 are against the decision of the Tribunal, which followed the earlier order in ITA No. 918/Mds.2005 dated 23.12.2005, which is the subject matter of the instant appeal. Therefore, it is his apprehension that even if TCA No.2213 of 2006 is disposed of, as the tax limit involved in this appeal falls within the Circular, the substantial question of law raised should be adjudicated and decided.

4. Mr. R. Kumar, learned counsel appearing for the respondent has no objection on the above said submission.

S.MANIKUMAR,J

and

D.KRISHNAKUMAR,J

avr

5. Placing on record, the above submission of the learned counsel for both parties, T.C.A No.2213 of 2006 is dismissed as withdrawn, leaving the substantial question of law to be adjudicated along with T.C.A. No. 174 to 178 of 2008.

(S.M.K.,J) (D.K.K.,J)

22.08.2016

avr

To

Commissioner of Income Tax
Chennai.

T C A No. 2213 of 2006