IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam
and
The Hon'ble Mrs.Justice V.Bhavani Subbaroyan

Tax Case Appeal No. 1472 of 2008

Commissioner of Income Tax,
Chennai. ...Appellant

Vs.

Shri P.Damodaran,
26/27 Errabalu Chetty Street,
Chennai - 600 001. ...Respondent

This Tax Case Appeal is filed under Section 260 - A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "B" Bench, dated 14.03.2008 passed in I.T.A.No. 1630/Mds/2005, for the assessment year 2001-02. arising upon the order of Commissioner of Income Tax (Appeals) V, Chennai, dated 29/03/2005, in ITA.No. 165/2004-05 arising against the Assessment order dated 17/03/2004, in PAN/GIR.No. ASP 3681R/WSI-63-P-1, of Income Tax Officer, Company Ward VI(i), Chennai.

For Appellant : Mr.Vijay Kumar Punna

For Respondent : Mr. I.Dinesh for Mr.G.Baskar

ORDER

This appeal filed by the Revenue under Section 260-A of Income Tax Act, 1961 (herein after "the Act" for brevity) is directed against the order passed by the Income Tax Appellate Tribunal Madras 'B' Bench in ITA No. 1630/Mds/2005, for the assessment year 2001-02.

2.The appeal has been admitted, vide order dated 12.09.2008, on the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction u/s 80IB on the profits of the unit assembling cable jointing kits?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the losses of the Chennai unit need not be set off against the gross profit to calculate the benefit of Sec. 80IB of the new unit?

3. Whether the facts and circumstances of the case, the Tribunal was right in holding that merely because the assessee had credit balance in his capital account, it cannot be said that borrowed funds were not used for investment when there is a clear finding by the lower appellate authority that the capital amount consisted of fixed and current assets and was not in liquid form ready for withdrawal?"

3.The learned counsel for the respondent/assessee has filed a memo contending that the appeal filed by the Revenue cannot be pursued further in view of the Circular No. 3/2018, dated 11.07.2018, issued by Central Board of Direct Taxes. It is stated in the said memo that three issues arise for consideration, viz.,

(i)With regard to the deduction under Section 80IB of the Act,

(ii)Whether the losses of Chennai Unit need not be set off against the gross profit, to calculate the benefit of Section 80IB of the new Unit; and

(iii)Whether the dis-allowance of interest was justified.

4.It is submitted that the tax effect insofar as the first issue is concerned is only Rs.16,33,347/- and on the second issue, if the losses of the Chennai Unit are set off, the deduction is only further reduced and in the third issue, the tax effect is Rs.1,21,538/-. Thus, the total aggregate tax effect of the appeal is Rs.19,83,020/-, which includes Surcharge @ 13%, amounting to Rs. 2,28,135/-. The above factual position has not been controverted by the respondent/Revenue.

5.Thus, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

1.Income Tax Appellate Tribunal Madras "B" Bench
Chennai.

2. The Commissioner of Income Tax Appeals V,
Chennai.

3. Income Tax Officer,
Company Ward VI (i),
Chennai.

+1cc to Mr.G.Baskar, Advocate, S.R.No. 70393

Tax Case No. 1472 of 2008

RSK(CO)
GN(30/10/2018)