In the High Court of Judicature at Madras

Dated : 08.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.12 of 2009

M/s.SMR Cotton Mills Pvt.
Ltd., Rasipuram ...Appellant

Vs

The Commissioner of Income Tax,
Salem. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.4.2008 in ITA No.92/Mds/2005 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2002-03 against the order passed by the commissioner of Income Tax (Appeals) salem in ITA NO.26/04-05 Dated.07.12.2004.

For Appellant : Mr.T.Vasudevan
For Respondent: Ms.K.G.Usharani

ORDER

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. The Revenue preferred this appeal challenging the order passed by the Income Tax Appellate Tribunal dated 29.4.2008 in ITA.No.92/Mds/2005 for the assessment year 2002-03.

3. The above appeal has been admitted on 19.2.2009 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the levy of interests under Sections 234B and 234C while computing the MAT under the deeming provisions of Section 115JB of the Act ?

> ii. Whether the Tribunal was correct in law in upholding the levy of interests when the provisions relating to advance tax in Sections 207 to 211 are not applicable to the computation under Chapter XII B? And
>
> iii. Whether the Tribunal was justified in law in upholding the levy of interest under Section 234B when there is no mandate in law either to estimate the book profit or for payment of advance tax on book profits and hence, as there is no mandate to treat the book profits as total income under the provisions of Section 211 ?”

4. The learned counsel for the assessee fairly submits that substantial question of law Nos.2 and 3 are also integral part of substantial question of law No.1 and that therefore, it is sufficient to answer the first substantial question of law alone.

5. The said submission is placed on record and this Court will answer the first substantial question of law alone.

6. The learned counsel for the assessee again fairly submits that the legal issue, which arises for consideration before this Court in so far as the first substantial question of law, has been decided against the assessee by the Hon'ble Supreme Court in the case of JCIT Vs. Rolta India Limited [reported in (2011) 330 ITR 0470].

7. The operative portion of the decision in Rolta India Limited reads as follows :

> “9. The question which remains to be considered is whether the assessee, which is a MAT Company, was not in a position to estimate its profits of the current year prior to the end of the financial year on 31st March. In this connection the assessee placed reliance on the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. v. CIT reported in (2000) 243 ITR 519 and, according to the Karnataka High Court, the profit as computed

under the Income Tax Act, 1961 had to be prepared and thereafter the book profit as contemplated under Section 115J of the Act had to be determined and then, the liability of the assessee to pay tax under Section 115J of the Act arose, only if the total income as computed under the provisions of the Act was less than 30% of the book profit. According to the Karnataka High Court, this entire exercise of computing income or the book profits of the company could be done only at the end of the financial year and hence the provisions of Sections 207, 208, 209 and 210 (predecessors of Sections 234B and 234C) were not applicable until and unless the accounts stood audited and the balance sheet stood prepared, because till then even the assessee may not know whether the provisions of Section 115J would be applied or not. The Court, therefore, held that the liability would arise only after the profit is determined in accordance with the provisions of the Companies Act, 1956 and, therefore, interest under Sections 234B and 234C is not leviable in cases where Section 115J applied. This view of the Karnataka High Court in Kwality Biscuits Ltd. was not shared by the Gauhati High Court in Assam Bengal Carriers Ltd. v. CIT reported in (1999) 239 ITR 862 and Madhya Pradesh High Court in Itarsi Oil and Flours (P.) Limited v. CIT reported in (2001) 250 ITR 686 as also by the Bombay High Court in the case of CIT v. Kotak Mahindra Finance Ltd. reported in (2003) 130 TAXMAN 730 which decided the issue in favour of the Department and against the assessee. It appears that none of the assessees challenged the decisions of the Gauhati High Court, Madhya Pradesh High Court as well as Bombay High Court in the Supreme Court. However, it may be noted that the judgment of the Karnataka High Court in Kwality Biscuits Ltd. was confined to Section 115J of the Act. The Order of the Supreme Court dismissing the

Special Leave Petition in limine filed by the Department against Kwality Biscuits Ltd. is reported in (2006) 284 ITR 434. Thus, the judgment of Karnataka High Court in Kwality Biscuits stood affirmed. However, the Karnataka High Court has thereafter in the case of Jindal Thermal Power Company Ltd. v. Dy. CIT reported in (2006) 154 TAXMAN 547 distinguished its own decision in case of Kwality Biscuits Ltd. (supra) and held that Section 115JB, with which we are concerned, is a self-contained code pertaining to MAT, which imposed liability for payment of advance tax on MAT companies and, therefore, where such companies defaulted in payment of advance tax in respect of tax payable under Section 115JB, it was liable to pay interest under Sections 234B and 234C of the Act. Thus, it can be concluded that interest under Sections 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable under Section 115JA/115JB. For the aforestated reasons, Circular No. 13/2001 dated 9.11.2001 issued by CBDT reported in 252 ITR(St.)50 has no application. Moreover, in any event, para 2 of that Circular itself indicates that a large number of companies liable to be taxed under MAT provisions of Section 115JB were not making advance tax payments. In the said circular, it has been clarified that Section 115JB is a self-contained code and thus, all companies were liable for payment of advance tax underSection 115JB and consequently provisions of Sections 234B and 234C imposing interest on default in payment of advance tax were also applicable."

8. The above decision was followed by this Court in the case of M/s. Tamilnadu Magnesite Limited Vs. JCIT [TCA.No.874 of 2008 dated 09.4.2018], to which, one of us (TSSJ) was a party.

9. In the light of the decision in the case of Rolta India Limited, the first substantial question of law is answered against the assessee and in favour of the Revenue. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
RS Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal Chennai,'D' Bench Chennai. .

2. The Commissioner of Income Tax ,Salem.

3.The Commissioner of Income Tax (Appeals),Salem

4.The Assistant Registrar,
Income Tax Appellant Tribunal,
Rajaji Bhavan,Besant Nagar,Chennai.

+1cc to Mr.T.R.Senthil Kumar , Advocate SR.No. 69515

TCA.No.12 of 2009

ASK(01/11/2018)