IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.13 of 2009

The Commissioner of Income-tax
Coimbatore. ... Appellant/Respondent

-vs-

M/s.Prime Textiles Ltd.,
110, Avanashi Road,
Gandhinagar Post,
Tirupur - 641 603. ... Respondent/Appellant

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "D" Bench, Chennai, dated 18-05-2007 passed in I.T.A.No.2475/Mds/2006 for the assessment year 2002-03, against the order passed by the Commissioner of Income Tax (Appeals)II Coimbatore dated 15/11/2006 made in DT Appeal No.169C/2005 for the Assessment year 2002-03 and against the order passed by the Assistant Commissioner of Income Tax Coimbatore dated 28/03/2005 made in PAN/GIR No.AABCP9571P(GIR No.P-1 (Circle-I/TPR) for the Assessment year 2002-03.

For Appellant : Ms.K.G.Usha Rani,
Junior Standing Counsel
for Mr.T.R.Sethilkumar,
Senior Standing Counsel
NA for Respondent

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue, is directed against the order of the Income-tax Appellate Tribunal "D" Bench, Chennai, dated 18.05.2007, in I.T.A.No.2475/Mds/2006 for the assessment year 2002-03.

2. The above appeal has been admitted on 28.01.2009, on the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the disallowance deduction under Section 80HHC in a case of MAT assessment is to be worked out on the basis of the adjusted books profits under section 115JB of the Income Tax Act, 1961 is valid?

(ii) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the interest under Section 234-D cannot be levied for the period prior to 01.06.2003 is valid?"

3. The learned Junior Standing Counsel appearing for the Revenue fairly submits that the 1st substantial question of law has been answered against the Revenue in the case of Commissioner of Income Tax vs. Bhari Information Technology Systems Private Limited, (2011) 15 SCC 539 :: (2012) 340 ITR 593. The operative portions of the judgment read as follows:-

> "4. In the said judgment of the Special Bench, which squarely applies to the facts of the present case, the Tribunal held that the deduction under Section 80-HHC (Section 80-HHE also falls in Chapter VI-A) is to be worked out not on the basis of regular income tax profits but it has to be worked out on the basis of the adjusted book profits in a case where Section 115-JA is applicable. In the said judgment the dichotomy between regular income tax profits and adjusted book profits under Section 115-JA is clearly brought out. The Tribunal in the said judgment rightly held that in Section 115-JA relief has to be computed under Section 80-HHC(3)/(3-A). According to the Tribunal, once the law itself declares that the adjusted book profit is amenable for further deductions on specified grounds, in a case where Section 80-HHC (Section 80-HHE in the present case) is operational, it become clear that computation for the deduction under those sections needs to be worked out on the basis of the adjusted book profit.
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> 5. In the present case we are concerned with Section 80-HHE which is referred to in the Explanation to Section 115-JA, clause (ix). In our view, the judgment of the Special Bench of the Tribunal in Syncome Formulations squarely applies to the present case. Following the view taken by the Special Bench in Syncome Foundations, the Tribunal in the present case came to the conclusion that deduction claimed by the assessee under Section 80-HHE has to be worked out on the basis of adjusted book profit under Section 115-JA

and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business. The judgment of the Tribunal has been upheld by the High Court."

4. Following the decision in Bhari Information Technology Systems Private Limited (supra), the first substantial question of law is answered against the Revenue.

5. The second substantial question of law is with regard to interest under Section 234-D of the Income Tax Act, 1961 where it cannot be levied for period prior to 01.06.2003. This question was considered by this Court in the case of CIT vs. M/s.Brakes India Ltd. (T.C.A No.1419 of 2008: Dated 07.09.2018) and the operative portion of the decision reads as follows:-

> "6.So far as the substantial questions of law Nos.3 and 4 are concerned, the same has also been answered by the Hon'ble Supreme Court holding that the provision, namely, Section 234D of the Act, though was inserted by the Finance Act, 2003 with effect from 01.06.2003, by virtue of the Explanation 2, which was inserted by the Finance Act, 2012 with retrospective effect from 01.06.2003 and will apply to all pending assessments before 01.06.2003. Therefore, the said substantial question of law are answered in favour of the Revenue. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in CIT V. Reliance Energy Limited, (2013) 358 ITR 371 (SC)."

6. Following the decision in CIT vs. M/s.Brakes India Ltd. (supra), the second substantial question of law is answered in favour of the Revenue.

7. Accordingly, the appeal filed by the Revenue, is partly allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Income-tax Appellate Tribunal “D” Bench, Chennai.

2. The Assistant Commissioner of Income Tax, Coimbatore

3. The Joint Commissioner of Incoem Tax, Tirupur Range, Tirupur

4. The ACIT Circle I Tirupur

5. The JCIT, Tirupur Range, Tirupur

6. The CIT III, Coimbatore

7. The CCIT (Appeals) II, Coimbatore

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.78119

T.C.(A) No.13 of 2009

SR(CO)

GMY(27/12/2018)