IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

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

Tax Case Appeal No.162 of 2009

The Commissioner of Income Tax II
Coimbatore. ... Appellant/Respondent

-vs-

M/s.K.G.Denim Ltd.,
Then Thirumalai
Mettupalayam 641 302. ... 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 31.10.2008 in I.T.A.No.607/MDS/2008 for the assessment year 2003-04.

against the order of the Commissioner of Income Tax-III, Coimbatore dated 29.01.2008 in C.No.320(7)/2007-08/CIT-III/CBE for the assessment year 2003-2004 against the order of the Assistant Commissioner of Income Tax, Salary Circle-I, Coimbatore dated 28.02.2006 in P.A.No/GIR NO:AACK7040C for the Assessment year 2003-04.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

For Respondent : Mr.J.Balachander
for Ms.Janani Anathakrishnan

J U D G M E N T

(Judgment of the Court was delivered by
T.S.SIVAGNANAM,J.)

This appeal by the Revenue has been filed under Section 260-A of the Income Tax Act, 1961 against the order passed by the the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 31.10.2008 in I.T.A.No.607/MDS/2008 for the assessment year 2003-04.

2. The appeal has been admitted on 16.03.2009 on the following substantial question of law:-

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the miscellaneous income, representing waiver of loan under one time settlement Scheme is not taxable even though the miscellaneous income as taxable as revenue receipt, on the basis of the Supreme Court decision reported in 222 ITR 344?"

3. We have heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the Revenue and Mr.J.Balachander, learned Counsel on behalf of the assessee.

4. The learned counsel for the assessee submitted that the substantial question of law framed for consideration has been answered in favour of the assessee by the Hon'ble Supreme Court in the case of Commissioner v. Mahindra and Mahindra Ltd., [2018] 404 ITR 1 (SC), wherein, the Hon'ble Supreme Court held that the term "loan" generally refers to borrowing something, especially a sum of cash that is to be paid back along with the interest decided mutually by the parties. In other terms, the debtor is under a liability to pay back the principal amount along with the agreed rate of interest within a stipulated time. The creditor or his successor may exercise the "right of waiver" unilaterally to absolve the debtor from his liability to repay. After such exercise, the debtor is deemed to be absolved of the liability of repayment of loan subject to the conditions of waiver. The waiver may be a part waiver, i.e., waiver of part of the principal or interest repayable, or a complete waiver of both the loan as well as interest amounts. Hence, waiver of loan by the creditor results in the debt or having extra cash in his hand.

5. The learned Standing Counsel for the revenue is not able to distinguish the judgment relied upon by the learned counsel for the assessee.

6. Thus, following the above decision, the appeal filed by the revenue is dismissed. The substantial question of law is answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal
   "D" Bench, Chennai.

2. The Commissioner of Income Tax,
   Coimbatore.

3. The Commissioner of Income Tax-III,
   Coimbatore.

4. The Assistant Commissioner of Income Tax,
   Salary Circle-I, Coimbatore.

+1 cc to Mr.T.R.Senthil Kumar, Advocate Sr.No.77560
+1 cc to Mr.J.Balachander, Advocate Sr.No.77329

TCA.No.162 of 2009

VBA(CO)
CSL/04.12.2018