IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case (Appeal) Nos.195 & 196 of 2009

M/s.Sri Sakthi Textiles Ltd.,
Post Box No.36,
Coimbatore Main Road,
Pollachi 642 001. Appellant /Appellant in both

Vs.

The Joint/Additional Commissioner of
Income Tax,
Special Range-I,
Coimbatore. Respondent/ Respondent in both

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 5.8.2005 in ITA Nos.622/Mds/02 and 623/Mds/02 against the order dated 04.03.2002 and made in C.NO.320(3) 2001-2002 CIT-III,CBC Passed by the commissioner of Income Tax III, Coimbatore for the Assessment Year 1997-98 and 1998 -99 respectively against the order dated 22.02.2000 and 28.02.2001 made in PAN /GIR NO.47-022-CV-9952 passed by the Joint commissioner of Income Tax,special range I,Coimbatore for the Assessment Year 1997-98 and 1998 &1999 respectively.

For Appellant : Mr.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.R.Senthilkumar,
Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the court was delivered by DR.ANITA SUMANTH,J.)

The Tax Case (Appeals) relate to Assessment Years 1997-1998 and 1998-1999 respectively and have been admitted on the following substantial questions of law:-

"i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the Commissioner of Income under section 263 ignoring the ratio laid down by the Honourable Apex Court in the case of M/s.Malabar Industrial

Company vs. C.I.T. (243 ITR 83)?
ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the prior period expenses cannot be reduced from the book profits computed under section 115 JA, even if such expenses have been debited to the profit and loss account in the books and have been allowed in the assessment order for computing the income under the normal provisions of the I.T. Act, 1961 for the assessment year in appeal?
iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that profit and loss appropriation account does not form part of the profit and loss account and as such any amounts displayed under the Profit and Loss appropriate accounts has to be excluded while computing books profits for the purpose of Section 115JA?
iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the ratio of the decision of the Supreme Court in the case of Apollo Tyres Ltd. v. CIT (255 ITR 273) is not applicable to the case of the appellant?"

2. Heard Mr.Venkatanarayanan, learned counsel for M/s.Subbaraya Aiyar Padmanabhan for the assessee and Mr.T.R.Senthilkumar, learned Senior Standing Counsel for the Revenue.

3. Learned counsel appearing for the Revenue fairly concedes that the questions referred for resolution are covered against the Revenue and in favour of the assessee by judgments of the Supreme Court in the case of Malabar Industrial Corporation Limited v. CIT (243 ITR 83) and Commissioner of Income Tax v. Max India Limited ((2007) 295 ITR 282) on the question of exercise of jurisdiction under Section 263 of the Income Tax Act.

4. He also brings to the notice of the court that on merits, the question of allowability of prior period expenses in the context of a revision under Section 263 of the Income Tax Act has been specifically considered by a Division Bench of this court in Tamil Nadu Cements Corporation Limited v. Joint Commissioner of Income Tax ((2012) 349 ITR 58) and held in favour of the assessee.

5. This court has, in T.C.(A) No.941 of 2009 in respect of the same assessee for Assessment Year 1998-1999 , answered the identical issues as above.

6. In the light of the above, the questions are answered in favour of the assessee and against the Revenue. The Tax Case (Appeals) are allowed. No order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Joint/Additional Commissioner of Income tax, Special Range-I, Coimbatore.

2. The Commissioner of Income Tax III, Coimbatore.

3. The Income Tax Appellate Tribunal, 'D' Bench, Chennai.

+1cc to M/s.Subbaraya Aiyar , Advocate SR.No. 85605
+1cc to Mr..R.Senthilkumar , Advocate SR.No. 85608

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A.SK(18/01/2019)