IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

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

Tax Case (Appeal) No.197 of 2009

M/s.Clariant Chemicals (India) Ltd.,
Karumuttu Centre, III Floor,
498, Anna Salai, Chennai-600 035.

(Cause titled accepted, vide Court order
dated 03.03.2009 in M.P.No.1 of 2009
in T.C.(A) SR No.74205 of 2006) ... Appellant

-vs-

The Joint Commissioner of Income-tax,
Special Range-VI, Chennai-600 034. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal 'B' Bench, Chennai dated 17.03.2006 in I.T.A.No.29/Mds/2000 for the assessment year 1996-97, against the order dated 15/10/99 made in 9T/WT/9T Appeal NO.187/98-99 on the file of the Commissioner of Income Tax(Appeals)V, chennai-34 and against the order dated 18/09/98 and made in PAN/GIR.NO.47-055-CZ-2607-2-V on the file of the Deputy Commissioner of Income Tax, Special Range VI, Chennai-34.

For Appellant : Mr.R.Venkata Narayanan,
For M/s.Subbaraya Aiyar,
Padmanabhan, Ramamani

For Respondent : Mrs.R.Hemalatha,
Senior Standing Counsel

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JUDGMENT

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

This appeal, filed by the appellant/assessee under Section 260A of the Income-tax Act, 1961, is directed against the order of the Income-tax Appellate Tribunal 'B' Bench, Chennai, (for brevity "the Tribunal") dated 17.03.2006, passed in I.T.A.No.29/Mds/2000 for the assessment year 1996-97.

2. The appeal was admitted, on 30.03.2009, on the following substantial questions of law:-

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not holding that the interest received on belated payment of sale price from customers do not form part of the 'business profit'?
>
> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that interest on belated payments is in the nature of miscellaneous income as per cl. (baa) to Explanation to section 80HHC of the Income Tax Act and hence 90% of the same has to be excluded from the profits of the business for the purpose of computation of deduction under section 80HHC?
>
> (iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that only the gross interest receipts should be reduced from the profits of the business as per cl.(baa) to Explanation to Section 80HHC?"

3. Heard Mr.R.Venkata Narayanan, learned counsel for the appellant and Mrs.R.Hemalatha, learned Senior Standing Counsel for the respondent.

4. The issue to be decided is whether the Tribunal was right in reversing the decision of the Commissioner of Income-tax (Appeals)-V (for brevity "the CIT(A)) dated 15.10.1999 by which, the CIT(A) directed the Assessing Officer to take note of the following decisions:-

(i) CIT vs. South India Shipping Coprn. Ltd., [1995] 216 ITR 651;

(ii) CIT vs. Visakhapatnam Port Trust, 1983 144 ITR 146 AP;

(iii) MAC Industries Ltd. vs. ACIT (I.T.A.No.1595/Mds/1996);

(iv) Deputy Commissioner of Income Tax vs. Vindhya Telelinks Ltd., (1997) 58 TTJ Jab 450; and

(v) Kentilal Chotulal vs. D.C. 63 ITJ 527 (Mum)

and deal with the subject, reducing relatable interest payment from interest receipts, after verifying the evidences as may be put forth by the assessee. The Tribunal reversed the said finding by placing reliance on the decision of this Court in K.S.Subbiah Pillai & Company vs. CIT, (2003) 260 ITR 304.

5. The Revenue cannot dispute the legal position that the decision in K.S.Subbiah Pillai & Company (supra) is no longer

good law, in the light of the decision of the Hon'ble Supreme Court in ACG Associated Capsules (P) Ltd. vs. Commissioner of Income Tax, (2012) 247 CTR 0372 wherein the Hon'ble Supreme Court held that ninety per cent of the net interest or net rent, which has been included in the profits of the assessee as computed under the head “Profits and gains of business or profession” and not the gross interest or gross rent, is to be deducted under Clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business.

6. In the light of the above decision, the substantial questions of law are answered in favour of the assessee and the appeal is accordingly allowed. The direction issued by the Commissioner of Income-tax (Appeals)-V is restored and to be complied with by the Assessing Officer at the earliest. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income-tax Appellate Tribunal Bench 'B' Chennai.

2.The Joint Commissoner of Income Tax,
Special Range-VI,
Chennai-600 034.

3.The Commissioner of Income Tax,
(Appeals)V, Chennai-34.

4.The Depurty Commissioner of Income Tax,
Special Range-VI,
Chennai-34.

+1cc to Mr.T.Ravi Kumar, Advocate sr.no.78835
+1cc to M/s.Subbaraya Aiyar, Advocate sr.no.78979

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nr 10/01/2019