In the High Court of Judicature at Madras

Dated : 25.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.950 & 1378 of 2008

The Commissioner of Income
Tax, Chennai ...Appellant in TCA. 950/2008 & Respt. in TCA.1378/2008

Vs

M/s.Southern Polymers Pvt. Ltd.,
Chennai-20. ...Respondent in TCA.950/2018 & Appellant in TCA. 1378/2008

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.10.2007 in ITA Nos.533 and 103/Mds/2006 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench for the assessment year 2002-03.

For Revenue : Mr.T.R.Senthilkumar & Ms.K.G.Usharani

For Assessee : Mr.R.Sivaraman

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard the learned counsel on either side.

2. Both the Revenue and the assessee preferred these appeals challenging the common order dated 31.10.2007 passed by the Income Tax Appellate Tribunal respectively in ITA.Nos.533 and 103/Mds/2006 for the assessment year 2002-03.

3. These appeals were admitted respectively on 16.7.2008 and on 02.9.2008 on the following substantial questions of law :

> "*TCA.No.950 of 2008 :*
>
> *i. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the amount of Rs.60 lakhs received by the assessee is a non compete fee and hence to be treated as a capital receipt not liable to tax ? And*
>
> *ii. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the amount received on termination of the contract is capital receipt and not revenue receipt ?*
>
> *TCA.No.1378 of 2018 :*
>
> *i. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in law in treating the capital loss amounting to Rs.1,19,98,286/- as speculative in nature by invoking Explanation to Section 73 of the Income Tax Act ? And*

ii. Whether, on the facts and circumstances of the case, the Explanation to Section 73 of the Income Tax Act will apply to the facts and circumstances of the present case especially when the appellant had done these transactions purely as investments and shown these shares as investments in the books of accounts and in the balance sheet and not as stock in trade?”

4. The learned counsel on either side do not dispute the fact that substantial question of law No.1 has been answered by the Hon'ble Supreme Court in favour of the assessee in the case of ***Guffic Chem (P) Ltd. Vs. CIT [reported in (2011) 198 Taxman 78].*** So far as the second question of law is concerned, the same has also been answered in favour of the assessee in the light of the decision of the Hon'ble Supreme Court in the case of ***Oberoi Hotel (P) Ltd. Vs. CIT [reported in (1999) 103 Taxman 236].***

5. Thus, following the said decisions of the Hon'ble Supreme Court, both the substantial questions of law are answered in favour of the assessee and against the Revenue. Consequently, the tax case appeal filed by the Revenue is dismissed and the tax case appeal filed by the assessee is allowed. No costs.

25.10.2018

RS

<u>T.S.SIVAGNANAM,J</u>
<u>AND</u>
<u>V.BHAVANI SUBBAROYAN,J</u>

RS

Internet : Yes

To
The Income Tax Appellate Tribunal, Madras 'C' Bench.

TCA.Nos.950 & 1378
of 2008

25.10.2018

TCA.Nos.950 and 1378 of 2008

T.S.SIVAGNANAM,J,
AND
V.BHAVANI SUBBAROYAN,J (thro'video conferencing)

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

The matters are listed today under the caption 'for being mentioned'.

2. It is pointed out by the learned Senior Standing Counsel for the Revenue that two appeals were disposed of by a common judgment dated 25.10.2018. The appeal filed by the Revenue was dismissed following the decision of the Hon'ble Supreme Court. So far as the appeal filed by the assessee is concerned, the learned counsel for the assessee made an endorsement in the case bundle requesting permission to withdraw their appeal.

3. However, inadvertently, in the order dated 25.10.2018, it has been mentioned that the tax case appeal filed by the assessee is allowed. This is an error.

4. Accordingly, paragraph 5 of the common judgment dated 25.10.2018 shall stand substituted as follows :

"Following the said decision of the Hon'ble Supreme Court, both the substantial questions of law are answered against the Revenue. Consequently, the tax case appeal filed by the Revenue is dismissed and the tax case appeal filed by the assessee is dismissed as withdrawn."

14.12.2018

RS