IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM :

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

Tax Case Appeal No.91 of 2009

The Commissioner of Income-tax,
Coimbatore .... Appellant

-vs-

M/s.Bannari Amman Spinning Mills Ltd.,
252, Mettupalayam Road,
Coimbatore-43 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 25.05.2006 in ITA No.3361/Mds/2004, for the Assessment year 2001-02 against the order of the Commissioner of Income Tax Appeals-1, Coimbatore, dated 8.10.2004 in PA.NO.AAACB8513A in the assessment year 2001-02

against the order of the Additinal Commissioner of Income Tax Range/ Coimbatore dated 17.3.2004 in PAN/GIR No.AAACB8513A/B 10 inthe assessment year 2001-02.

For Appellant : Mr.T.R.Senthilkumar
Mrs.K.G.Usha Rani

For Respondent : R.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue, filed under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in ITA No.3361/Mds/2004, for the Assessment year 2001-02.

2.The Appeal has been admitted, by order dated 05.03.2009, on the following Substantial Question of Law:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the question of payment of interest to the assessee would arise only if set off MAT credit is allowed against the advance tax payment and it should be treated on par with the Advance tax?"

3.Heard Mr.T.R.Senthil Kumar and Mrs.K.G.Usha Rani, the learned counsels for the appellant and Mr.R.Venkatanarayan for M/s.Subbarama Aiyar Padmanabhan, the learned Senior Standing Counsel for the respondent.

4.The Assessing Officer, while completing the assessment under Section 143(3) of the Act, vide order dated 17.3.2004, has given credit for brought forward MAT credit amounting to Rs.59,11,827/-, after calculating interest under Section 234-B and 234-C of the Act. The correctness of this order was challenged by the assessee by filing appeal before the Tribunal. The Tribunal followed the decision in the case of Chemplast Sanmar (reported in 83 TTJ 427) and directed that brought forward MAT credit available is to be treated on par with the advance tax and advance TDS and the Assessing Officer should calculate interest under Section 234B and 234C of the Act, after giving credit for the brought forward MAT credit. Challenging the same, the Revenue is before us.

5.The Substantial Question of Law arising for consideration in this appeal has been answered against the Revenue by the Supreme Court in the case of Commissioner of Income Tax vs. Tulsyan Nec Ltd.,[(2011) 330 ITR 0226]. The Hon'ble Supreme Court confirmed the decision in the case of CHEMPLAST SANMAR LTD [(2009) 22 DTR (Mad) 241]. The Hon'ble Supreme Court held that the MAT Credit admissible in terms of Section 115JAA has to be set off against the tax payable (assessed tax) before calculating interest under Sections 234A, 234B and 234C of the Act.

In the light of the above, this appeal filed by the Revenue is dismissed and the Substantial Question of Law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Income Tax Appellate Tribunal Madras 'D' Bench,
Rajaji Bhavan, Besant Nagar, Chennai.

2. The Commissioner of Income GTax Appeals-1, Coimbatore.

3. The Additional Commissioner of Income Tax Range-I,
Coimbatore.

+ 1 cc to Mr. Subbarayo Aiyar, Advocate Sr.78124
+ 1 cc to Mr. Senthilkumar, Advocate Sr.78122

T.C.A.No.91 of 2009

MG(CO)
EU(07/12/2018)