IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM :

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

Tax Case Appeal Nos.194 to 199 of 2011

The Commissioner of Income Tax-I,
Chennai.
...Appellant in all the appeals

-vs-

M/s.Ambica Agarbathies And
Aroma Industries Limited
Ambica Empire-Best Western
No.57,100 Ft. Road, Vadapalani,
Chennai.
...Respondent in all the appeals

Common Prayer: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') against the order of the Income Tax Appellate Tribunal Chennai 'C' Bench, dated 23.07.2010 in ITA Nos.314 to 319/Mds/2010, for the Assessment years 2000-01 to 2005-06 respectively.

TCA 194 TO 198/2011: Appeal filed against the order of the Commissiner of Income Tax (A) III ,Chennai in ITA Nos.302/08-09, ITA No.212/07-08 and 301,303 and 304/08-09 IA-III dated 17.12.2009 in PAN No.AAACA 7483L against the order of the Deputy Commissioner of Income Tax Company Circle (1), Chennai in PA GIR No. AAACA74831/AX2-041 for the Assessment Year 2004-2005, 2003 -2004, 2002-2003 dated 28.11.2008 against the Assessment orders in PA GIR No.AAACA7483L/AX2-041 for the year 2001-02 against the Assessment orders dated 26.10.2007 in PA/GIR NoAAACA 7483L/AX2.041 the file of Assistant Commissioner of Income Tax Company Circle (1) Chennai.

TCA.199/11: Appeal filed against the order of the Commissioner of Income Tax Appeals III, 121, Mahatma Gandhi Road, Chennai - 600 034, in ITA Nos.591/07-08/AIII dated 17.12.2009 in PAN/AAA CA7483L against the Assessment order dated

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26.12.2007 in PA (GIR No.AAACA7483L/AX2-041 for the Assessment Year 2005-2006 on the file of Assistant Commissioner of Income Tax Company Circle 1(1) Chennai.

For Appellant :Mrs.R.Hemalatha
(in all the appeals)

For Respondent :Mr.R.Sivaraman
(in all the appeals)

JUDGMENT

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

These Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'C' Bench, dated 23.07.2010 in ITA Nos.314 to 319/Mds/2010, for the Assessment years 2000-01 to 2005-06 respectively.

2.Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellants and Mr.R.Saravanan, learned Counsel for the respondent.

3.The Appeal Nos.194 to 198 of 2011 have been admitted on 03.08.2011, on the following Substantial Questions of Law:

> "(i)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the initial assessment year referred to in Section 80IA (5) would mean only the first year of the claim of deduction under Section 80IA by the assessee and not the commencement of operation of the eligible undertaking?
>
> (ii)Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in holding that the unabsorbed depreciation and carried forward losses of the earlier years which had already been set off against the other income, could not be notionally carried forward and taken into consideration for the purpose of computation of deduction under Section 80IA, inspite of the clear provisions of Section 80IA stipulating that the said undertaking should be considered as only the source of income of the

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assessee for the purpose of determining the eligible profits?"

4. The Appeal No.199 of 2011 has been admitted on 03.08.2011, 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 holding that the business losses of a unit which was not eligible for deduction under Section 10A of the Act could not be set off against the profits of the undertaking eligible for deduction under Section 10A for the purposes of determining the allowable deduction under Section 10A of the Act?"

5.We have perused the order of Assessment as well as the Order passed by the Commissioner of Income Tax and we find that the tax effect in this appeal is lesser than the threshold limit mentioned in Circular No.3 of 2018, dated 11.07.2018, issued by the Central Board of Direct Taxes, which fixes the monetary limit as Rs.50,00,000/- for the Department to pursue the matter. Furthermore, the Revenue has not been able to point out any distinguishing features, by which the Circular No.3 of 2018, dated 11.07.2018, cannot be applied.

6.Thus, for the above reasons, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs. The Revenue is at liberty to seek for restoration of appeal, if at a later point of time, it is found that the tax effect is above the threshold limit.

mrm

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench.

2.The Commissioner of Income Tax Appeals III,
121, Mahatma Gandhi Road, Chennai - 34.

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3.The Assistant Commissioner of Income Tax,
Company Circle 1(1), Chennai.

4.The Deputy Commissioner of Income Tax,
Company Circle 1 (1),
Chennai.

5.The Assistant Registrar,
Income Tax Appellate Tribunal,
III floor, Rajaji Bhavan,
Besant Nagar, Chennai - 90.

+6cc to Mr.T.Ravi Kumar, Advocate, SR.No.81287
+1cc to Mr.P.SivaRaman, Advocate, SR.No.81551

T.C.A.Nos.194 to 199 of 2011

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