IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

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

Tax Case (Appeal) Nos.684 and 685 of 2018
and C.M.P.No.14250 of 2018

Principal Commissioner of Income Tax 1,
No.63, Race Course Road,
Coimbatore. ... Appellant in both the Appeals

-vs-

M/s.Essilor Sankar & Co-optics Pvt. Ltd.,
321, A & B, Mettupalayam Road,
Opp. Murugan Mill Road,
Coimbatore - 641 043.
PAN: AABCE 9781G ... Respondent in both the Appeals

Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal 'A' Bench, Chennai, dated 16.01.2018 in I.T.A.Nos.1511 and 1512/Mds/2017 for the assessment year 2013-14 and 2014-15.

Appeal against the order of the Income Tax, Appellate Tribunal Madras A Bench, Dated 16/01/2018 in ITA.No. 154/MDS/2017 Assessment Year 2013-2014 and the Income Tax Appeal Tribunal Madras A Bench, Dated 16/01/2018 in ITA.No. 1512/MDS/2017 Assessment Year 2014-2015 against the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 29/03/2017 Appn.No. 163/16-17 PAN.No. AABCE9781G Assessment Year 2014-2015 against the Commissioner of Income Tax(Appeals)-I, Coimbatore Date of order 29/03/2017 Appn.No. 19/16-17 PAN.No. AABCF9781G Assessment Year 2013-2014 against Asst. Commissioner of Income Tax Corporate Circle - 2, Coimbatore PAN.No. AABCE9781G Assessment Year 2014-2014 against PAN.No. AABCE 9781G Assessment Year 2013-2014.

For Appellant : Mr.T.R.Senthil Kumar
(in both the Appeals) Senior Standing Counsel

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

These appeals, by the appellant/Revenue, are directed against the order of the Income-tax Appellate Tribunal 'A' Bench, Chennai, dated 16.01.2018 in I.T.A.Nos.1511 and 1512/Mds/2017 for the assessment year 2013-14 and 2014-15.

2.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/revenue.

3.The above appeals have been filed by the appellant/revenue by raising the following substantial questions of law:-

> "1.Whether the Tribunal is correct in ignoring the fact that the entire transaction under is on slump sale basis and thus the concept of amortization of the individual assets does not arise?
>
> 2.Whether the ITAT is justified when Explanation 5 to Sec.32(1) inserted by the Finance Act, 2001 with effect from 01.04.2002 which clearly lays down that depreciation shall be granted whether or not the assessee claims the same in computing his total income as per which amortization claim of the assessee gets exhausted in the Asst year 2012-13?
>
> 3.Whether the ITAT is correct in holding that the claim of amortization is made for the first time by the assessee in the Asst Year 2013-14 without taking into cognizance the letter submitted by the assessee wherein it was clearly stated that the claims of amortization have already been made by them for the Asst Years 2011-12 and 2012-13?

4.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 these appeals 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.

5.Thus, for the above reasons, the Revenue cannot pursue these appeals in view of the low tax effect. Hence, the appeals are dismissed and the substantial questions of law, framed for consideration, are left open. The Revenue is at liberty to seek for restoration of appeals if at a later point of time, it is found that the tax effect is above the threshold limit or to fall under the exceptional clauses mentioned in the Circular. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Income-tax Appellate Tribunal 'A' Bench,
Chennai.

2.The Commissioner of Income Tax (Appeals)-1,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Corporate circle - 2, Coimbatore.

4.The Deputy Commissioner of Income Tax,
Corporate Circle - 2, Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 88711

T.C.(A) Nos.684 and 685 of 2018

VSNII(CO)
GN(23/01/2019)