IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1351 to 1353 of 2008

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

Vs.

M/s.Sundaram Brake Linings
Limited, Padi,
Chennai-600 050. .. Respondent in all the appeals

* * *
Prayer : Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, dated 12.10.2007 in ITA No.45, 41 and 42/Mds/2006 for the Assessment Years 1998-1999, 2000-2001 and 2001-2002.
* * *

For Appellant in : Mr.T.Ravikumar
all these appeals Senior Standing Counsel

For Respondent in : Mr.R.Vijayaraghavan
all these appeals

C O M M O N J U D G M E N T

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

T.C.A.(A)No.1351 of 2008 :
This appeal filed by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal Bench C, Chennai, dated 12.10.2007 in ITA No.45/Mds/2006 for the Assessment Year 1998-1999.

2. This appeal has been admitted vide order dated 28.08.2008 on the following substantial question of law:
Whether in the facts and circumstances of the case, the Tribunal was right in allowing deduction u/s 80HHC on the basis of book profits u/s 115JA even though the eligible profits u/s 80HHC was Nil as per normal computation ?

3. Heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Vijayaraghavan, learned counsel for the respondent/assessee.

4. An identical issue came up for consideration before us in the case of Commissioner of Income Tax V. Bannari Amman Sugars Limited (T.C.A.No.163 of 2009, dated 30.07.2018). In the said case, we noted that the legal issue was considered by the Hon'ble Supreme Court in the case of Ajanta Pharma Ltd. v. Commissioner of Income Tax reported in 2010 (327) ITR 0305. Furthermore, in the impugned order passed by the Tribunal in the said appeal, the decision of the Special Bench in the case of DCIT v. Syncome Formulations (I) Ltd. and others reported in 292 ITR 144 (AT) has been relied on. The said decision has been approved by the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Bhari informations Technology System (P) Limited reported in 2012 (340) ITR 0593. The operative portion of the judgment dated 30.07.2018 reads as follows :
“5. The legal issue was considered by the Hon'ble Supreme Court in the case of Ajanta Pharma Ltd. v. Commissioner of Income Tax reported in 2010 (327) ITR 0305 and it was held that clause (iv) of Explanation to Section 115 JB covers full export profits of 100% as "eligible profits" and the same cannot be reduced to 80% by relying on Section 80 HHC(1B) and the argument of the Department that both "eligibility" as well as "deductibility" of the profit have to be considered together for working out the deduction as mentioned in clause (iv) of Explanation to Section 115JB is devoid of merits.
6. Thus, the decision of the Hon'ble Supreme Court in Ajanta Pharma Ltd. (cited supra) applies to the case on hand, as identical question has been framed for consideration. Further, we note that the decision of the said fact in Syncome Formulations (I) Ltd. (cited supra) was considered by the Hon'ble Supreme Court along with other decisions and the decision of the Tribunal was confirmed in the case of Commissioner of Income Tax v. Bhari informations Technology System (P) Limited reported in 2012 (340) ITR 0593.”

5. We may note that a Division Bench of this Court in the case of Commissioner of Income Tax, Chennai Vs. M/s.Three Bags India P.Ltd., 2016 SCC Online Mad 27408, after taking note of the decision in Ajanta Pharma Ltd. (cited supra), decided the above question in favour of the assessee and against the Revenue.

6. In the light of the aforesaid discussion, the substantial question of law, which has been framed for consideration, is answered against the Revenue and in favour of the assessee.

7. Accordingly, this Tax Case Appeal stands dismissed. No costs.

T.C.A.Nos.1352 and 1353 of 2008 :

8. These appeals filed by the Revenue are directed against the order passed by the Income Tax Appellate Tribunal Bench ‘C’, Chennai, dated 12.10.2007 in ITA Nos.41 and 42/Mds/2006 for the Assessment Years 2000-2001 and 2001-2002.

9. These appeals have been admitted vide order dated 28.08.2008 on the following substantial questions of law:
“1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the Tax Deducted at Source and Advance Tax paid ?
2. Whether on the facts and circumstances of the case, the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1 ?”

10. Heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Revenue and

Mr.R.Vijayaraghavan, learned counsel for the respondent/assessee.

11. The learned Senior Standing Counsel for the Revenue submitted that the above referred to substantial questions of law have been answered against the Revenue by the Hon'ble Supreme Court in the case of CIT V. Tulsyan NEC Ltd., (2011) 330 ITR 0226. The operative portion of the judgment reads as follows :

"The issue which crops up for decision is – how should the advance tax be calculated when the company has MAT credit ?

To answer, we need to look at section 234B. Under that section, "assessed tax" means the tax on the total income determined under section 143(1) or on regular assessment under section 143(3) as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income. The definition, thus, at the relevant time excluded the MAT credit for arriving at assessed tax. This led to immense hardship. The position which emerged was that due to omission on one hand the MAT credit was available for set off for five years under section 115JAA but the same was not available for set off while calculating advance tax. This dichotomy was more spelt out because section 115JAA did not provide for payment of interest on the MAT credit. To avoid this situation, Parliament amended Explanation 1 to section 234B by the Finance Act, 2006 with effect from April 1, 2007 to provide along with tax deducted or collected at source, the MAT credit under section 115JAA also to be excluded while calculating assessed tax.

From the above, it is evident that any tax paid in advance/pre-assessed tax paid can be taken into account in computing the tax payable subject to one caveat, viz., that where the assessee on the basis of self-computation unilaterally claims set off or the MAT credit, the assessee does so at its risk as in case it is ultimately found that the amount of tax credit availed of was not lawfully available, the assessee would be exposed to levy of interest under section 234B on the shortfall in the payment of advance tax. We reiterate that we cannot accept the case of the Department because it would mean that even if the assessee does not have to pay advance tax in the current year, because of his brought forward MAT credit balance, he would nevertheless be required to pay advance tax, and if he fails, interest under section 234B would be chargeable. The consequence of adopting the case of the Department would mean that the MAT credit would lapse after five succeeding assessment years under section 115JAA(3); that no interest would be payable on such credit by the Government under the proviso to section 115JAA(2) and that the assessee would be liable to pay interest under sections 234B and 234C on the shortfall in the payment of advance tax despite existence of the MAT credit standing to the account of the assessee. Thus, despite the MAT credit standing to the account of the assessee, the liability of the assessee gets increased instead of it getting reduced."

12. Thus, following the above decision of the Hon'ble Supreme Court, the substantial questions of law are answered against the Revenue and in favour of the Assessee.

13. Accordingly, these Tax Case Appeals stand dismissed. No costs.

(T.S.S., J.) (V.B.S., J.)

11.09.2018

Index : Yes / No

Internet : Yes

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To

1.The Income Tax Appellate Tribunal Madras 'C' Bench,
Chennai.
2.The Commissioner of Income Tax,
Chennai.
3.The Commissioner of Income Tax (Appeals),
Chennai.

T.S.SIVAGNANAM, J.
and
V.BHAVANI SUBBAROYAN, J.

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T.C.A.Nos.1351 to 1353 of 2008

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