IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MRS. JUSTICE BHAVANI SUBBAROYAN

Tax Case (Appeal) No.163 of 2009

The Commissioner of Income Tax,
Coimbatore ... Appellant

v.

M/s.Bannari Amman Sugars Ltd.
1212, Trichy Road
Coimbatore 641 018 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 15.02.2007 in ITA No.1824/Mds/2006 for the assessment year 1999-2000 preferred agaisnt the order dated 03.05.2006 in Appeal No.ITA.NO.430/2005-2006 on the file of the Commissioner of Income Tax(Appeals-I) Coimbatore preferred against the Assessment order dated 25.01.2000 on the file of the Assistant Commissioner of Income Tax, Company Circle I(2) Coimbatore-18.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
Assisted by M/s.K.G.Usha Rani,
Junior Standing Counsel

For Respondent: Mr.R.Venkat Narayanan
for M/s.Subbaraya Aiyar &
Padmanabhan

J U D G M E N T

[Delivered by T.S.Sivagnanam, J.]

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms..K.G.Usha Rani learned Junior Standing Counsel for the Revenue and Mr.R.Venkat Narayanan, learned counsel appearing for the respondent.

2. This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal in I.T.A. No.1824/Mds/2006 dated 15.02.2008.

3. The above tax case appeal has been admitted on the following substantial question of law :

> "(i) Whether on the facts and in the circumstances of the case, the the Income Tax Appellate Tribunal is right in law in holding that the assessee is entitled to deduction under BOHHC on the book profits under section 115 JA /JB even though the normal computation of business income was NIL?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in deciding the issue in favour of the assessee by granting deduction under section BOHHC while applying the Special provisions of section 115 JA /JB of the Income Tax Act for the assessment year 1999-2000?"

4. The Tribunal decided the matter in favour of the assessee and in doing so, relied upon the decision of the Special Bench of the Mumbai Tribunal in the case of DCIT v. Syncome Formulations (I) Ltd. and others reported in 292 ITR 144 (AT) wherein, it was held that computation has to be done under the book profits and not under the normal computation.

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.

7. In the light of the aforesaid decisions, the substantial questions of law, which have been framed for consideration is answered against the Revenue. Accordingly the Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Assistant Registrar,
The Income Tax Appellate Tribunal, Madras 'D' Bench.

2.The Commissioner of Income Tax,
Coimbatore

3.The Assistant Commissoner of Income Tax,
Company Circle I(2),
Coimbatore-18

+1cc to Mr.T.R.Senthil Kumar, Advocate sr.no.51799
+1cc to M/s.Subbaraya Aiyar, Advocate sr.no.51795

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