IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). No.287 of 2010

Commissioner of Income Tax III,
Chennai. .. Appellant

vs.

Southern Petro Chemical Industries
Corporation Ltd.,
SPIC House, No.83, Anna Salai,
Guindy, Chennai - 32. .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai dated 05.06.2009 passed in I.T.A.No.1975/Mds/2008.

ITA Np.1975/Mds/2008 has been filed against the order dated 07/02/2008 in ITA No.307 & 338/06-07 passed by the commissioner of Income-I Tax (Appeals)-V, Chennai-34.

ITA No.307 & 338/06-07 has been filed against the order dated 31/10/2006 in No.AAACS4668K/51001-S/2006-07 passed by the Deputy Commissioner of Income-Tax, Company Circle V(1), Chennai-34

AAACS4668K/51001-S/2006-07 has been filed against the order dated 13/06/2006 in AAACS4668K/51001-S/2000-01/1TAT passed by the Assistant Commissioner of income -Tax Company circle V (1), Chennai-34 for the Assessment year 2000-01.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.Subbaraya Iyer

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The Revenue has come up with the appeal being aggrieved against the order of the Tribunal by formulating the following substantial questions of law:

> 1.Whether in the facts and in the 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 in the 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?
>
> 3.Whether the interest under Sections 234B and 234C has to be calculated after giving the MAT credit against the tax payable on the basis of normal computation?
>
> 4.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that only 2% of the exempt dividend income should be disallowed while computing the book profits instead of directing the Assessing Officer to make the disallowance in accordance with rule 8D of the Income Tax Rules?

2.Learned counsel appearing for the Revenue would submit that substantial questions of law 1 to 3 are covered by the decision of the Apex Court rendered in Commissioner of Income Tax Vs. Tulsyan Nec. Ltd. ((2011) 330 ITR 0226) against the Revenue and in favour of the assessee and thus these questions of law are answered against the Revenue.

3.Insofar as the fourth substantial question of law is concerned, it is submitted that inasmuch as the assessee itself did not produce any material with respect to expenditure incurred on the exempted income, the assessing officer has correctly done the guess work. The Tribunal ought not to have interfered with it by comparing it with the income under the normal provisions. Therefore, the substantial question of law will have to be answered in favour of the Revenue.

4.Learned counsel appearing for the assessee would submit that the assessing officer did accept the order of the Appellate Tribunal dated 02.12.2002 and retained 2% of the disallowance. However, while giving effect to the order of the Tribunal, he has wrongly adopted the dividend of 10% while computing book profit as against the reduction of expenditure from 10% to 2% in computing the income under the provisions of the normal provisions of the Income Tax Act, based upon the decision rendered by the Tribunal while passing the order. Hence no interference is required.

5.We have perused the order of the assessing officer as well as the Tribunal. It is a case where admittedly the assessee did not produce any material to show that it had incurred expenditure. Secondly, the assessing officer himself has retained 2% of the disallowance. Even the assessing officer did not give any reason for computing the dividend income at 10% while computing the book profit. Under those circumstances only, the Tribunal passed the order.

6.Though we find force in the submission made by the learned counsel for the Revenue that the reduction of the expenditure from 10% to 2% qua normal provisions of the Income Tax Act differs from the book profit, we find that there is no material which has been considered by the assessing officer while adopting 10% insofar as book profit is concerned.

7.In such view of the matter, we find that the issue with respect to quantum of investment and the cost incurred have not been taken into consideration. Therefore, we do not find any substantial question of law warranting interference. Accordingly, the Tax Case Appeal stands dismissed. However, we make it clear that dismissal of the appeal is only on the fact situation and therefore, the percentage adopted by the Tribunal cannot be taken as a precedent. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
"B" Bench, Chennai.

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

3.The Deputy Commissioner of Income-Tax, Company circle V(1)
Chennai.

4.The Assistant Commissioner of Income-Tax, Company circle V(1)
Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.45939
+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.46006

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(CO)
GSP(01/08/2018)