IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2018

CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Tax Case Appeal Nos.370 to 372 of 2010

Commissioner of Income Tax 1,
Chennai. ... Appellant/Respondent in All Tax appeals

Vs.

M/s.Dynavision Limited,
Near Dr.Vikram Sarabhai Instronics Estate,
Kottivakkam,
Chennai 600 041. ... Respondent /Appellant in All Tax appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'A' Bench dated 03.07.2009, ITA Nos.2943/Mds/1993, 1968/Mds/1994 and 250/Mds/1996, Assessment Years 1990-91, 1991-92, and 1992-93.respectively against the order of the commisioner of Income Tax(Appeals)-1,madras,dated 12/12/95(28/07/1994 and 14/10/1993)made in IT/Appeal No.24/95-96 ITA no.83/93-94 &Ita no.40/39-94b respectively, and against the assessment orders passed by the Assistant Commissioner,Central circle 11(1)(1/c) Madras-34,dated 27/03/1995, 29/03/1994 and 31/03/1993 respectively made in PAN (GIR nos 41-04/ct-0595 assesment year 1990-1991, 47-04/-CT-0595 assessment year 1991-1992 and PAN/GIR NO.47-04/-CT-0595 assessment year 1992-1993 respectively.

For Appellant : Mr.M.Swaminathan (in all)
Standing Counsel

For Respondent : Mr.Rahul Balaji (in all)

COMMON JUDGMENT

(Judgment of the Court was made by N.ANAND VENKATESH, J.)

The following Substantial Question of Law has been raised in these tax appeal cases:

1.Whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal was right in holding that the disallowance u/s 43B could not be made in respect of unpaid customs duty on the ground that such amount was included in the value of the closing stock?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding once an amount was included in the closing stock, the same was to be considered as part of profit and cancelled out the expenditure claimed and therefore section 43B could not be applied on such expenditure?

3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in the ignoring the fact that what was included in closing stock was taken to opening stock in the next year and there was no profit element attached to the valuation of the closing stock and the disallowance u/s 43B had to be made independently of the amount added to the value of the closing stock?

2.The assessee made a provision in the accounts for customs duty of a sum of Rs.4,59,10,736/- and had paid only a sum of Rs.3,34,13,072/- for the relevant assessment year. Therefore, Assessing Officer disallowed under Section 43B of the Income Tax Act sum of Rs.1,24,97,664/- and added to the same to the income. This was done on the ground that in order to claim deduction under Section 43B of the Income Tax Act, the customs duty must have been actually paid during the relevant assessment year.

3.The assessee went on an appeal before the CIT (Commissioner of Income Tax) and the Commissioner of Income Tax confirmed the order of the Assessing Officer. Aggrieved by the same, the assessee filed an appeal before the Income Tax Appellate Tribunal.

4.Before the Income Tax Appellate Tribunal a difference of opinion arose between the Judicial Member and the accountant member. The Judicial Member was of the view that the Assessing Officer was wrong in taking the aid of Section 43B of the Income Tax Act and add the balance customs duty to the total income. The accountant member took a contrary view. Therefore, the matter was referred to the third member. The third member of the Income Tax Appellate Tribunal concurred with the decision of the learned Judicial Member and thereby the order of the Assessing Officer was set aside and the appeal filed by the assessee was allowed as per the majority view.

5.Mr.M.Swaminathan, learned Standing counsel submits that the assessee had claimed deduction of customs duty payable by including the unpaid portion of a part of the purchase price and debiting it to the consumption account and therefore it was immaterial whether it was a part of a closing stock or not. Therefore, the learned Standing counsel would contend that what was allowable as a deduction under Section 43B was only the duty actually paid within the time prescribed under the Statute and not the amount which was not paid.

6.Per contra, Mr.Rahul Balaji, learned counsel appearing for the assessee would submit that no deduction was claimed under Section 43B of the Income Tax Act by the assessee. The assessee did not debit or claim by way of deduction from the profits, the amount of customs duty of Rs.4,59,10,736/-. The assessee had included the total customs duty in the cost of the raw material and this amount was provided by the assessee to the raw material purchase account. The value of the closing stock included the customs duty payable which was an accrued liability on the assessee consequent upon the importing of the goods. Therefore, the learned counsel would submit that the customs duty got reflected on the debit as well as the credit side of the account as evidenced from the Profit and Loss Account and therefore the assessee has not reduced the profits by claiming deduction of the customs duty liability and the provisions of Section 43B cannot be applied to the facts of this case and the Assessing Officer went wrong in taking the aid of the Section 43B and adding the balance customs duty of Rs.1,24,97,664/-.

7.This Court has carefully considered the arguments on either side. The Income Tax Appellate Tribunal by a majority view has held that Section 43B can be invoked only when the assessee claims deduction for any amount payable by way of a tax or duty and in the present case the assessee had merely included the total customs duty provision amounting to Rs.4,59,10,736/- in the cost of raw material and the value of the closing stock included the customs duty payable. Thus, the customs duty got reflected on both the debit and credit side of the account and therefore it did not in any way reduce the profits since the assessee himself did not claim deduction of the customs duty liability from the taxable profits. For the purpose of coming to this conclusion, the Appellate Tribunal has placed reliance on the Profit and Loss Account of the assessee Company.

8.The above finding of the Appellate Tribunal is a finding of fact based on materials. No substantial question of law is involved for this Court to interfere with the order of the Appellate Tribunal. Therefore, the Tax Appeals filed by the Revenue stands dismissed. However, liberty is given to the Assessing Officer to factually verify the above said accounting treatment made by the assessee and satisfy himself about the fact as to whether the customs duty was made part of the closing stock during the relevant assessment year.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Kp

Copy to:

1.The Commissioner of Income Tax,Chennai.
2.The Deputy Commissioner of Income Tax,Special Range-I, Chennai.
3.The Commissioner of Income Tax, (Appeals-I), Chennai.
4.The Income Tax, Appellate Tribunal, Chennai Bench 'A' chennai.

+2 cc to Mr.R.Parthasarathy Advocate SR.NO.46026&47135

T.C.A.Nos.370 to 372 of 2012

AR(CS-VII)
ASK(06/08/2018)

13.07.2018