IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2018

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

T.C.(A). Nos.7, 14 and 30 of 2010

Commissioner of Income Tax,
Company Circle IV(2). .. Appellant in all the appeals

vs.

M/s.Roots Multiclean Ltd.,
RKG Industrial Estate,
Ganpathy,
Coimbatore - 641 006. .. Respondent in all the appeals

Prayer:-

Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 30.11.2007 passed in ITA Nos.1194/Mds/2006, 1195/Mds/2006 and 1301/Mds/2006, preferred against the order of the Commissioner of Income Tax (Appeals)-I Coimbatore, dated 09.03.2006, made in A.No.175/04-05 and 435/04-05, against the order of the Deputy Commissioner of Income Tax, dated 17.01.2005 and 18.03.2004 made in PAN/GIR NO.AABCRO315 for the Assessment Year 2000-2001 and 2001-2002.

For Appellant : Mr.T.R.Senthil Kumar
and Mr.S.Rajesh in all the appeals
For Respondent : Mr.A.S.Sriraman
for Mr.S.Sridhar in all the appeals

COMMON JUDGMENT

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

The Revenue has filed these appeals by raising the following substantial questions of law:

1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the Annual Maintenance Charge is to be included in the total turnover for the purpose of claiming deduction under Section 80HHC?

2.Whether on the facts and circumstances of the case, the Tribunal is right in holding that deduction under MAT credit is to be worked out on the basis of adjusted book profits and not on the basis of profit computed under regular provision of law applicable to completion of profits and gains of business or profession?

2.Though two substantial questions of law have been raised, the appeals were admitted only on the first substantial question of law. In sofar as the second substantial question of law, the same was rejected by this Court by relying on the decisions in K.R.M. Marine Exports Ltd., Vs. Assistant Commissioner of Income Tax (201 CTR 1) and Commissioner of Income Tax Vs. Rajinikanth Schenelder & Associates Private Limited (302 ITR 22) respectively.

3.Heard the learned counsel appearing for the appellant. There is no representation on behalf of the respondent.

4.Learned counsel appearing for the appellant submits that the issue involved in these appeals viz., low tax effect has already been considered by this Court in T.C.A. No.1528 of 2007 on 06.06.2018 and the following order has been passed:

"3. It may not be necessary for us to decide the substantial question of law framed for consideration, on account of the low tax effect in this appeal. This issue was considered by us in the case of Commissioner of Income Tax vs. N.Meenakshisundaram in T.C.(A) Nos.868 & 869 of 2008 dated 23.04.2018, by taking note of the Circular Instructions issued by the Central Board of Direct Taxes (CBDT) and also taking note of the submissions of the Revenue, the relevant portions of which are quoted hereunder:

"10. An argument was advanced by the learned Senior Standing Counsel for the Revenue that the circular can have effect only, while filing the appeal and not while hearing of the appeal and would have no impact on the appeals, which are admitted and pending. However, in the Circular issued in the year, 2015, it has been made clear that, it will apply to pending appeals as well. In respect of the earlier circulars, it would be relevant to take note of the decision of the Hon'ble Supreme Court in Mathew M. Thomas Vs Commissioner Of Income-Tax [(1999) (III) ELT 4 SC] wherein, the Hon'ble Supreme Court, while considering the effect of Circular No.445, dated 16.05.1986, pointed out that Circular No. 455 dated 16.5.1986 issued by the C.B.D.T. is applicable to all pending proceedings which have not attained finality under Section 269 I of the Act as defined in the explanation to the said Section.

....

14. Therefore, the Circular has to be understood as part of the litigation policy of the Government of India to reduce the litigation and to bring down the number of Appeals, which are pending before the Court and also ensure that the Appeals are not preferred by the Department without proper examination of the case on merits. ....

15. As per the Circular/Instruction issued by CBDT, the present Appeal should be not pressed by the Revenue. If, at the time of filing of the Appeal, decision has to be taken whether to file an Appeal or not and the Authority by due application of mind and bearing the two caveats laid down by the Hon'ble Supreme Court, in Surya Herbal Ltd., case (supra) should take a decision. In cases, where, the Appeals are pending before the Court, appropriate Officer has to take a decision. In the instant case, it appears that, no such specific instruction is issued to Mr.M.Swaminathan, the learned Senior Standing Counsel to withdraw the Appeal, nor, can we compel the learned counsel to withdraw the Appeal.

16. Having held that the Circular issued by CBDT is applicable to the case on hand and the tax effect being less than the threshold limit prescribed in the Circular, we dismiss the present Appeal by applying the law laid down by the Hon'ble Supreme Court, in Surya Herbal Ltd., case (supra), as the two caveats mentioned thereunder

does not arise in the instant case."

4.By applying the above decision, we dismiss this tax case (appeal) on the ground of low tax effect and in terms of the above referred decision, leave the substantial question of law, which has been framed for consideration. No costs."

5.In such view of the matter and in view of the circular issued by the Central Board Direct Taxes in Circular No.21/2015 dated 10.12.2015, these tax case appeals are dismissed on the ground of low tax effect, leaving the substantial question of law open, which has been framed for consideration. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

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

3. The Deputy Commissioner of Income Tax,
Company Circle IV(2), Coimbatore.

4. The Assistant Registrar,
Income Tax Appellate Tribunal,
III rd Floor, Rajaji Bahavan,
Besant Nagar, Chennai-90.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.43776
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.43873

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cs/23/07/18