In the High Court of Judicature at Madras
Dated : 18.12.2018
Coram :
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.791 of 2018

Commissioner of Income Tax,
Corporate Circle 2,
Madurai.
...Appellant

Vs

M/s. Sri Jayajothi Textile Mills Pvt. Ltd.,
154, Reddiapatti Road,
Keelarajakularaman
Rajapalayam-626 136
PAN:AABCS 5352 B ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 02.05.2018 in ITA No.1896/CHNY/2017 on the file of the Income Tax Appellate Tribunal Chennai 'C' Bench for the assessment year 2013-14. against the order of Commissioner of Income Tax (Appeal-I) in ITA.No.61/2016-17 dt:08/05/2017 and against the order of Deputy Commissioner of Income Tax, Corporate Circle-2,/ No.2, V.P.R. Rathinasamy Nadar Road, Madurai.

For Petitioner : Ms.V. Pushpa &
S. Premalatha

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard learned Standing Counsel for the Revenue and carefully perused the materials placed on record.

2. This Appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee, by raising the following substantial question of law :

> " Whether the Income Tax Appellate Tribunal was right in deleting disallowance made under section 36(1) (iii) that the interest free advance paid to the sister concern was considered as commercial expediency without noting that there were

excess advance were given to the sister concern by the assessee ?"

3. The assessee was successful before the Commissioner of Income Tax (Appeals)-1 [for short the CIT(A)], who, by order dated 08.05.2017 allowed the assessee's appeal and deleted all the additions made by the Assessing Officer in his order dated 31.03.2016. This order was confirmed by the Tribunal when the Revenue filed an appeal before it. Now, the Revenue has come before us challenging the order passed by the Tribunal.

4. The question would be whether the amounts advanced by the assessee to the sister concern would have considered as commercial expediency.

5. The Revenue would contend that there was an excess advance, which was given to the sister concern and it cannot be taken as commercial expediency.

6. The CIT(A), while re-appreciating the factual position, held hereunder:

> "When the Assessing Officer himself admitted that the sister concern has not utilized the funds received from the appellant for any non-business purpose, I find that there is no scope for addition as the advance has been made only as a measure of commercial expediency. In view of the above, i direct the Assessing Officer to delete the addition of Rs.7,54,67,339/-.
>
> Apart from the above, it is seen that the appellant's case was selected for scrutiny for AY 2014-2015 and while completing the scrutiny assessment u/s 143(3) on 22.12.2016, the Assessing Officer did not make any addition on the ground that borrowed funds were diverted for non business purpose as on 31.03.2014, even though the amount outstanding as on 31.03.2015 to SITPL at Rs.54,08,41,068/- This means that the Assessing Officer himself, while completing the subsequent year's scrutiny assessment, accepted that there was adequate own funds of the company and the advance made to SITPL was only for the purpose of commercial expediency and not for non business purpose. In the circumstances, I find that the addition made by the Assessing Officer for this assessment year is not correct and the same is deleted"

7. When the above factual position was re-examined, the Tribunal noted that the Assessing Officer himself has recognized that the assessee has done a total value of power purchase from M/s. Ishwarya Textiles Mills Private Limited from 2006 to 2013 at Rs.53.16 Crores and this being so, it clearly

shows that the advance has been given only for the purpose of commercial expediency. Thus, we find that the 1st Appellate Authority and the Tribunal had considered the factual issue and arrived at a conclusion. We find that there are no substantial question of law arisen for consideration in this appeal.

8. Accordingly, the appeal is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench.

2.The Commissioner of Income Tax,
Corporate Circle-2, Madruri.

3.The Deputy Commissioner of Income Tax,
Corporate Circle-2, No.2
V.P.R.Rathinasamy Nadar Road,
Marduri.

4.The Commissioner of Income Tax,
Appeals-1, Madurai.

TCA.No.791 of 2018

KK(CO)
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