THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.Nos.157, 158 and 261 of 2006

Date: 03.01.2018

Between:

The Commissioner of Income Tax-III,
Hyderabad. …. Appellant

And

M/s. Suryalatha Spinning Mills Ltd.,
105, Surya Towers,
S.P.Road, Secunderabad. … Respondent

Counsel for the Appellant : Mr.B.Narasimha Sarma
Senior Standing Counsel
for Income Tax

Counsel for the Respondent : Mr.Challa Gunaranjan

The Court made the following:

Common Judgment : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

In these appeals by the revenue arising out of common order, the following substantial questions of law have been raised:

> "1. In the facts and circumstances of the case, whether, the claim of the Assessee to allow the expenditure incurred for the replacement of Manual Winder with that of Auto Care Winder and the orders of the ITA upholding the said claim in favour of the Assessee is sustainable in law in terms of Section 7 of Income Tax Act, 1961?
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> 2. Whether 90% of "net interest income" (i.e. interest receipts minus interest payments) or 90% of 'any receipts' by way of interest are to be excluded from the 'profits of business' for computation of deduction u/s. 80HHC of the Income Tax Act and the finding of the Tribunal that only 90% of 'net interest income' to be excluded for the said computation is sustainable in law in view of explanation (baa) of Section 80HHC of the Income Tax Act?".

2. At the hearing, Mr.T.Vinod Kumar, learned Senior Standing Counsel for Income Tax (TS), fairly conceded that the substantial question of law No.2 is covered in favour of the respondent-assessee by the judgment in **ACG Associated Capsules Pvt. Ltd., Vs. Commissioner of Income Tax**[1] and, therefore, the appeal is liable to be dismissed in respect thereof. As regards substantial question of law No.1, the learned Senior Standing Counsel submitted that the Tribunal has allowed the appeal of the respondent-assessee, based on the judgment of the Madras High Court in **Commissioner of**

[1] (2012) 343 ITR 89 (SC)

Income Tax Vs. Janakiram Mills Limited[2] and that the view taken by the Madras High Court in the said case was reversed by the Supreme Court in **Commissioner of Income Tax, Madurai Vs. Sri Mangayarkarasi Mills Private Limited**[3]. In para 32 of the judgment in Commissioner of Income Tax, Madurai Vs. Sri Mangayarkarasi Mills (3 supra), the Supreme Court held as under:

> "Further, even in *Ramaraju Case*, where this Court distinguished *Saravana Mills* case on the ground that that appeal was with respect to deduction only under Section 37 of the Act unlike *Saravana Mills* case, this Court set aside the High Court judgment in *Janakiram Mills* case and remitted the matter to the Commissioner (Appeals) to dispose of the matter in accordance with law. In the light of the observations made hereinabove, it is thus clear that the High Court decision in *Janakiram Mills* case is not good law on which reliance may be placed".

3. Mr.Challa Gunaranjan, learned counsel for the respondent has fairly not disputed the fact that while the order of the Tribunal under appeals is based on the judgment of the Madras High Court in **Janakiram Mills** (2 supra), the said judgment was set aside by the Supreme Court in **Commissioner of Income Tax Vs. Saravana Spinning Mills Pvt. Ltd.**[4] and a similar view was also taken by the Supreme Court in **Commissioner of Income Tax, Madurai Vs. Sri Mangayarkarasi Mills Private Limited** (3 supra).

4. In this view of the matter, the substantial question of law No.1 raised in these appeals is answered in favour of the revenue and,

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[2] (2005) 275 ITR 403 (Mad)
[3] (2011) 11 SCC 656
[4] (2007) 293 ITR 201 (SC)

accordingly, on this aspect, the common order of the Tribunal is set aside. The appeals are, accordingly, party allowed in favour of the revenue only on substantial question of law No.1, while confirming the order of the Tribunal on substantial question of law No.2, in favour of the respondent-assessee.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 3rd January, 2018

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