In the High Court of Judicature at Madras

Dated : 28.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.93 to 100 of 2019 and
CMP.Nos.1921, 1922, 1924, 1927 to 1929, 1936 and 1941 of 2019

The Commissioner of Income Tax,
Large Tax Payer Unit, Chennai ...Appellant in all the TCAs

Vs

M/s.Cholamandalam MS General
Insurance Company Limited,
Chennai-1 ...Respondent in all the appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.7.2018 respectively in ITA Nos.1620/Chny/2011, 1676/Chny/2011, 1350/Chny/2011, 1621/Chny/2011, 2276/Chny/2011, 2372/Chny/2011, 1366/Chny/2013 and 1759/Chny/2011 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench, Chennai respectively for the assessment years 2006-07, 2007-08, 2008-09, 2007-08, 2009-10, 2009-10, 2008-09 and 2006-07.

1) against the order dated 02/12/2009 passed by the Assistant Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the Assessment year 2006-2007; and

2) against the order dated 16/12/2010 passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the Assessment year 2007-2008; and

3) against the order dated 26/03/2013 passed by the Commissioner of Income Tax (Appeals), Large Tax Payer Unit, Chennai made in ITA No.106/11-12/LTU(A) for the Assessment year 2008-2009; and

4) against the order dated 28/07/2011 made in ITA No.37/10-11/LTU(A) passed by the Commissioner of Income Tax (Appeals), Large Tax Payer Unit, Chennai for the Assessment year 2007-2008; and

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5) against the order dated 26/06/2014 made in ITA No.13/13-14/LTU(A) passed by the Commissioner of Income Tax (Appeals), Large Tax Payer Unit, Chennai for the Assessment year 2009-10; and

6) against the order dated 28/03/2013 passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the Assessment year 2009-2010; and

7) against the order dated 23/12/2011 passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the Assessment year 2008-2009; and

8) against the order dated 03/08/2011 made in ITA No.43/09-10/LTU(A) passed by the Commissioner of Income Tax (Appeals), Large Tax Payer Unit, Chennai for the Assessment year 2006-2007.

For Appellant : Mr.M.Swaminathan, SSC

For Respondent : Mr.Sandeep Bagmar

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) challenge a common order passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench (hereinafter called the Tribunal) dated 31.7.2018 in ITA.Nos.1620, 1676, 1350, 1621, 2276, 2372 and 1759/Chny/2011 as well as 1366/Chny/2013.

2. The issues relate to the assessment years from 2006-07 to 2009-10. In all these appeals, the following common substantial questions of law are raised for consideration :

> "i. Whether the Tribunal was justified and correct in holding that UPS is the part of computer and entitled for depreciation at 60% ? and
> ii. Whether the Tribunal was justified and correct in holding that the provisions of 115JB of the Act, which enables the companies to compute book profit may not be applicable to insurance companies ?"

3. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel, assisted by Ms.V.Pushpa, learned Junior Standing Counsel for the appellant and Mr.Sandeep Bagmar, learned counsel accepting notice for the respondent.

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4. The first substantial question of law was decided by us in TCA. No. 41 of 2019 etc. cases by a common judgment dated 18.1.2019 [CIT, Larger Taxpayer Unit, Chennai Vs. M/s.Royal Sundaram Alliance Insurance Company Limited], the relevant portion of which, reads as follows :

> "This issue has been decided by us against the revenue in T.C(A).No.23 of 2019 dated 18.1.2019. Following the same, the appeals filed by the revenue on this ground are dismissed and the above substantial question of law is answered in favour of the assessee."

5. Following the said decision, the first substantial question of law is answered in favour of the assessee and against the Revenue to the extent indicated above.

6. So far as the second substantial question of law is concerned, in the very same decision, we decided the question against the Revenue and in favour of the assessee therein, the relevant portion of which reads as follows:

> "We have perused the order passed by the Commissioner of Income Tax (Appeals) [CIT (A)] as well as the Tribunal. As rightly pointed out by the Tribunal, the Insurance Companies prepare profit and loss account as per the guidelines issued by the Insurance Regulatory and Development Authority of India and not as per Part II and III of Schedule VI of Companies Act. Furthermore, the applicability of Schedule VI of the Companies Act was specifically excluded in respect of Insurance Companies. The revenue has not been able to dislodge before us by way of an appeal. We find that the conclusion arrived at by the Tribunal in this regard is proper and valid. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered in favour of the assessee."

7. Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant has drawn our attention to the assessment order for the year 2007-08 dated 16.12.2010 and by referring to the factual statement made therein, it is submitted that the assessee themselves declared their income under Section 115JB of

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the Act and that therefore, it will not lie in the mouth of the assessee now to contend that the said provision is inapplicable.

8. At the first blush, the argument of the learned Senior Standing Counsel appears to be impressive. However, on a cursory reading of the assessment order as well as the order passed by both the CIT(A) as well as the Tribunal, it is evidently clear that the assessee, at no point of time, accepted the applicability of Section 115JB of the Act. In fact, their contention was that the said Section is not applicable to insurance companies. This is evident from paragraph B(1) of the assessment order dated 16.12.2010 wherein such a contention was dealt with by the Assessing Officer. In any event, there can be no estoppel against a Statute.

9. We have also perused the order passed by the CIT(A) dated 28.7.2011 relevant to the assessment year 2007-08 wherein also identical contention was raised by the assessee and both before the Assessing Officer as well as before the CIT(A), the assessee was not successful. But, before the Tribunal, the assessee was successful in the sense that the Tribunal considered the submissions and noted that the applicability of the provisions of Schedule VI of the Companies Act was excluded in respect of the insurance companies.

10. In the decision in the case of Oriental Insurance Co. Ltd. Vs. DCIT [reported in (2018) 407 ITR 658], an identical question was considered by the High Court of Delhi wherein it was held as follows :

> "54. Turning now to ITA No.447/2015, the question concerns the applicability of Section 115JB of the Act to insurance companies. The ITAT has permitted the assessee to raise this question since, in a large number of judgments of the ITAT, the question has been answered in favour of the assessee.
>
> 55. It is plain, from a reading of Section 44 read with the First Schedule of the Act that insurance companies are required to prepare accounts as per the IA and the regulations of the IRDA and not as per Parts II and III of Schedule VI of the Companies Act. The assessee prepares its accounts as per the IRDA principles. The IRDA Regulations govern the preparation of the auditor's report.
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> 56. Consequently, the question framed in ITA No.447/2015 is answered in the

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affirmative, i.e. in favour of the assessee and against the Revenue by holding that Section 115JB of the Act does not apply to insurance companies."

11. In the light of the above discussions, we are of the firm view that the decision taken by us in TCA.No.41 of 2019 etc. cases dated 18.1.2019 does not call for any change and our view is also supported by the decision of the Delhi High Court in the case of Oriental Insurance Co. Ltd. For the above reasons, the second substantial question of law is also decided against the Revenue and in favour of the assessee.

12. Accordingly, the above tax case appeals fail and are dismissed. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

RS

To

1) The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai

2) The Assistant Commissioner of Income Tax,
Large Tax Payer Unit, Chennai

3) The Deputy Commissioner of Income Tax,
Large Tax Payer Unit, Chennai

4) The Commissioner of Income Tax (Appeals)
Large Tax Payer Unit, Chennai

+17 ccs to M/s.M.Swaminathan, Advocate, S.R.No.6352 to 6359,6608

+4 ccs to M/s.Sandeep Bagmar,Advocate, S.R.No.6699 to 6702.

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