IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.02.2019**

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE Mr.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.1508 of 2007

M/s. Sundaram Clayton Limited
29, Haddows Road
Chennai – 600 006 Appellant / Appellant

Vs.

The Income-tax Officer
International Taxation II
Chennai – 600 034. Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 04.4.2007 made in ITA No.1884/Mds/02.

For Appellant : Mr. Venkatraman
for M/s. Subbaraya Aiyar Padmanabhan

For respondent : Mr.T.Ravikumar

<u>J U D G M E N T</u>

(Delivered by **DR.VINEET KOTHARI, J.**)

This Appeal has been filed by the Assessee under Section 260-A of the Income Tax Act 1961, raising the following substantial question of law from the order of the learned Income Tax Appellate Tribunal dated 04.04.2007 for the Assessment year 2002-2003.

2. The question of law on which the present Appeal was admitted by the Co-ordinate Bench of this Court dated 03.01.2008, is quoted below:-

> *"(i) Whether on the facts and in the circumstances of the case and considering the provisions of the Double Taxation Avoidance Agreement between India and U.K. The Tribunal was right in law in holding that the liability of the assessee to deduct tax at source from the payments made to a non-resident is to be computed on the gross amount including the tax liability undertaken by the appellant."*

3. The learned counsel for the appellant fairly submitted that a similar controversy as involved in the case by a group company of the present Assessee ***M/s. TVS Motor Company Limited Vs. the***

Income Tax Officer, has already been decided by a Co-ordinate Bench of this Court in ***T.C.A.No. 1509 to 1513 of 2007*** decided on **24.08.2018** and it had been held that the obligation to pay the tax is on the University of Warwick and since the Assessee had agreed to pay the taxes, the principle of grossing up has to be applied.

4. The relevant paragraph Nos. 37 and 38 of the said order of the Co-ordinate Bench is quoted below:-

> *"**37.** In the light of the above legal and factual position, for the purpose of deduction of tax at source on the payment made by the Assessee to the University of Warwick, the income should be computed in terms of the provisions of the Act and in so doing, it shall be increased by taking into consideration the amount of tax liability undertaken to be borne by the Assessee. In other words, the obligation to pay the tax is on the University of Warwick and since the Assessee in terms of the agreement agreed to pay the taxes, the same has to be necessarily added to the income of the University of Warwick and therefore, the principle of grossing up has to be applied.*

> ***38.*** *In the light of the above discussion we have no hesitation to hold that the Assessing Officer, the CIT(A), and the Tribunal rightly held that the principles of grossing up would apply to the Assessee's case.*
>
> *In the result, substantial question of law as framed is answered against the Assessee and the appeals stand dismissed."*

5. In view of the above, since the controversy is no longer *res integra* and the question of law has been answered against the Assessee in the case of a group company of the Assessee group itself, we do not find any reason to take a different view of the matter and therefore, the present Appeal filed by Assessee is also liable to be dismissed and the question of law framed above is answered in favour of the Revenue and against the Assessee.

6. The Tax Case (Appeal) filed by the Assessee is, accordingly, dismissed. No order as to costs.

(V.K., J.) (C.V.K., J.)
04.02.2019

Index : Yes/No
Internet : Yes/No
vsg

To

The Income-tax Officer
International Taxation II
Chennai – 600 034.

DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

vsg

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