IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case No.1799 of 2008

M/s.TVS Motor Company Limited
29, Haddows Road,
Chennai - 600 006.

.... Appellant/Appellant

Vs

Assistant Commissioner of Income Tax,
Company Circle - III(2), Chennai - 600 034.

.... Respondent/Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 22.05.2008 made in ITA No.792/Mds/2007 for the Assessment Year 2003-04, against the order of the Commissioner of Income Tax (Appels)-VIII, dated 29/1/2007, chennai in ITA.No.32/06-07-Tr6/A VIII against the order of the Assistant Commissioner of Income Ax company circle III(2), Chennai-34 dated 6.3.2006 in PA No/GIR No.32024

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

For Respondent : Mr.M.Swaminathan,
Sr. Standing Counsel

J U D G M E N T

(Delivered by DR.ANITA SUMANTH,J)

The assessee is in appeal before us challenging an order of the Income Tax Appellate Tribunal (in short 'Tribunal') dated 22.05.2008 relating to Assessment Year 2003-04.

2. The following substantial questions of law have been framed and admited by this Court for our adjudication:

> '1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that scrap sales and labour charges should be included in the total turnover for the purpose of computation of deduction under section 80HHC of the Act?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the appellat is not entitled to deduction under section 80HHC of the Act in respect of the interest income earned out of business operations?'

3. Heard Mr.R.Vijayaraghavan, learned counsel appearing for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the respondent/Revenue.

4. Both learned counsel concur that as far as question No.1 is concerned, the same has been considered by us and answered in favour of the assessee in the case of M/s.Rajapalayam Mills Ltd., V. The Deputy Commissioner of Income Tax (T.C.A.No.342 of 2009 dated 02.01.2019) following the decision of the Supreme Court in the case of Commissioner of Income Tax VII, New Delhi V. Punjab Stainless steel Industries ((2014) 15 SCC 129).

5. Accordingly, substantial question of law No.1 is answered in favour of the assessee and against the Revenue.

6. As far as substantial question of law No.2 is concerned, 90% of the interest income would have to be excluded from the ambit of the profits of the business in the computation of relief under section 80HHC of the Act in the light of clause (baa) under the Explanation to section 80HHC.

7. Having said so, the Supreme Court in the case of ACG Associated Capsules (P) Ltd. V. Commissioner of Income Tax ((2012) 67 DTR 205), settles the position that what requires to be excluded from the profits of the business is only the net

figure of all items referred to in clause (baa) including interest. Thus, the net, and not gross interest, will be reduced in the computation of relief under section 80HHC.

8. The second substantial question of law is answered in favour of the Revenue and against the assessee. The re-computation, as aforesaid, will be effected by the Assessing Authority within a period of three (3) months from the date of receipt of a copy of this order after affording an opportunity to the assessee in this regard.

9. This appeal is disposed of in the above terms with no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax (Appeals) VIII, Chennai

3. The Assistant Commissioner of Income Tax Company circle III(2), Chennai-34

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SSD(CO)

GMY(07/03/2019)