IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal Nos.1125 to 1129 of 2009

Thiagarajar Mills(P) Limited
kappalur, Madurai 625 008. Appellant in all Appeals

vs.

Asst.Commissioner of Income Tax,
Company Circle - 1, Madurai. Respondent in all Appeals

cause title accepted vide order of Court
dated: 13.10.2009 made in MP.1/2019 to 1/19
in TC(A) SR.No. 59416, 59427, 59425, 59419 &
59431/19.

T.C.A.No.1125 of 2009 is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, Chennai, dated 03.04.2009, made in I.T.A No.1801/Mds/2007.

Against the order dated 27/03/2007 made in ITA.No. 0363/2006-07 passed by the Commissioner of Income Tax (Appals) -I, Madurai against the Order dated 07/10/2006 passed by the Assistant Commissioner of Income Tax, Company Circle I, Madurai for the assessment year 2002-03.

T.C.A.No.1126 of 2009 is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, Chennai, dated 03.04.2009, made in ITA No.CO No.104/Mds/2007 in I.T.A.No.1801/Mds/2007.

Against the Order dated 27/03/2007 made in ITA.No. 0363/2006-07 passed by the Commissioner of Income Tax (Appeals) I, Madurai against the order dated 07/10/2006 passed by the Assistant Commissioner of Income Tax, Company circle I, Madurai for the assessment year 2002-03.

T.C.A.No.1127 of 2009 is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, Chennai, dated03.04.2009, made in I.T.A No.426/Mds/2007.

Against the order dated 07/11/2006 made in ITA.No. 0013/06-07 passed by the Commissioner of Income Tax (Appeals) I Madurai against the order dated 29/03/2006 passed by the Joint Commissioner of Income Tax, Company circle I, Madurai for the assessment year 2003-04.

T.C.A.No.1128 of 2009 is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 03.04.2009, made in I.T.A No.984/Mds/2007.

Against the order dated 23/01/2007 made in ITA.No.0240/06-07 passed by the Commissioner of Income Tax (Appeals) I, Madurai against the order dated 29/12/2006 passed by the Assistant Commissioner of Income Tax, Company Circle I, Madurai for the assessment Year 2004-05.

T.C.A.No.1129 of 2009 is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal,'B' Bench, Chennai, dated 03.04.2009, made in I.T.A No.1160/Mds/2007.

Against the order dated 23/01/2007 made in ITA.No. 0240/06-07 passed by the Commissioner of Income Tax (Appeals) -I, Madurai and against the order dated 29/12/2006 passed by the Assistant Commissioner of Income Tax, Company Circle I, Madurai for the assessment year 2004-05.

For Appellant in
all Appeals : Mr.R.Srinivasan

For Respondent in
all Appeals : Mr.M.Swaminathan
Senior Standing counsel Assisted by
M/s.S.Premalatha
Jr.Standing Counsel

COMMON JUDGMENT
(By Dr.Vineet Kothari, J.)

Aggrieved by the order dated 03.04.2009, passed in I.T.A.Nos.1801, 426, and 1160/Mds/2007, for Assessment Years 2002-2003, 2003-2004, 2004-2005, Assessee has filed all the Appeals under Section 260-A of the Income Tax Act,1961.

2. The following substantial questions of laws were suggested in the appeal filed by the Assessee against the order in I.T.A.No.1801/Mds/2007 for the Assessment Year 2002-2003 in TCA.No.1125 of 2009 and against the order in I.T.A.No.984/Mds/2007 for the Assessment Years 2004-2005 in TCA.No.1128 of 2009 :-

TCA.No.1125 of 2009:

" 1) Whether on the facts and in the circumstances of the case the Tribunal is right in holding that interest income arising in the course of core business has to be excluded applying Explanation (baa) under Section 80 HHC of the Income tax Act, 1961 without even applying netting principle?

2) Whether the Appellate Tribunal was right in reversing the order of the first appellate authority and restoring that of the Assessing Officer for excluding receipts arising in the core business and not specified in Explanation (baa) to section 80 HHC?"

TCA.No.1128 of 2007:

1. Whether the Appellate Tribunal was right in reversing the order of the first appellate authority and restoring that of the Assessing Officer for excluding receipts arising in the core business and not specified in Explanation (baa) to section 80 HHC?

2. Whether the Tribunal was right in directing the Assessing Officer to value the opening stock also on the basis as the closing stock in a case of change in valuation of closing stock which was accepted as bonafide and contrary to the decision of the jurisdictional High Court?

3. As far as question arising out of Section 80 HHC(baa) of IT Act, 1961
in the respective appeal is concerned, we are of the view that the issue is pending before the Special Bench of the Tribunal and therefore there is no substantial questions of law to be decided now by us for the present. We therefore, do not find any reason to answer this issue at present.

4. As far as variance in valuation of the opening stock and closing stock is concerned, the learned Standing Counsel submitted that while remanding the case back to the Assessing Officer directed adoption of valuation of cost price method with regard to valuation of opening stock on the same manner as the closing stock. He relied on the Judgment by the Division Bench of this Court in M/s.Kadari Ambal Mills Limited Super B-3, Industrial Estate, Madurai vs. Joint Commissioner of Income Tax and another in TCA.No.430 of 2005 dated 20.06.2001 wherein it is stated that the Tribunal is wrong in holding that there must be uniformity in the method of valuation of opening stock as well as the closing stock and further submitted that in a case remand back to the Appellate Tribunal.

5. The learned counsel for the Revenue submitted that the relevant Paragraphs 24 and 32 of the order of the Appellate Tribunal, dated 03.04.2009, are quoted below for ready reference :

> " 24. After considering the rival contentions and the materials on record, we note that the assessee has changed the method of valuation of closing stock from the market price to the cost which has reduced the value of the closing stock. As per the accounting standards, the valuation of the stock should be at the cost market price, whichever is less. Therefore, there is no dispute that by adopting the cost price method for valuation of the closing stock, the assessee has followed the principle of accounting standards but at the same time the assessee should have also valued the opening stock on the same basis to maintain the uniformity and to avoid distortion of results. There is no bar in adopting the method of valuation which is bonafide but the method should be adopted for both, opening stock as well as closing stock. We note that the Assessing Officer has not discussed this issue in detail and in our view when the assessee has adopted the cost price method for valuation of the closing stock, then the same method should be adopted for valuation of the opening stock also for the accounting year under consideration. Accordingly, we set aside the orders of the lower authorities, qua this issue and remit the same to the record of the Assessing Officer to decide this issue fresh by doing the valuation of opening stock as well as the closing stock at the cost price method.

32. After considering the rival contentions and the materials on record, we note that sub-section (2) and (3) of Section 14A have been inserted in the statute by the Finance Act, 2006 w.e.f.01.04.2007. These subsections have provided that if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure, he shall determine the amount of expenditure incurred in relation to such income in accordance with such method as prescribed. We further note that in the case of Income Tax Officer vs. Daga Capital Management (P) Ltd., supra the Mumbai Special Bench of this Tribunal has held that "subsection (2) and (3) of section 14A are procedural in nature and hence retrospective. Therefore, if the Assessing Officer is not satisfied with the claim of the assessee, he has to determine the expenditure as per the rule 8D of the Income Ta Rules. Accordingly, we set aside the orders of the lower authorities, quo this issue and remit the same to the record of the Assessing Officer to ascertain the expenditure incurred in respect of the dividend income according to the Rules and decide this issue after hearing the assessee."

6. Having considered the submissions made by the learned counsel for the Revenue, we do not find any substantial questions of law arising in respect of the method of valuation and therefore all the appeals may be remanded back to the Tribunal and the learned Tribunal may pass final orders about the valuation of closing stock in accordance with law after considering the decision of this Court cited supra while passing the fresh order. The learned Tribunal upon such remand shall pass a fresh order, within a period of six months from today. The Assessee shall appear before the Tribunal at the first instance without any further notice on 17.10.2019.

7. Accordingly, these Appeals are disposed of. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kkd

To

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

2.The Assistant Commissioner of Income Tax,
Company Circle - 1,
Madurai.

3.The Commissioner of Income Tax,
(Appeals) I, Madurai.

4.The Joint Commissioner of Income Tax,
Company Circle I, Madurai.

+1cc to Mr.S.Premalatha, Advocate, S.R.No. 76392
+1cc to Mr.R.Srinivasan, Advocate, S.R.No. 76482

SAI(CO)
GN(17/10/2019)