IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) Nos.2190 to 2192 of 2008

Commissioner of Income Tax,
Chennai. .. Appellant in all Appeals

-vs-

M/s.Sholingar Textiles Ltd.,
No.31, (Old No.15A),
Cathedral Garden Road,
Chennai-600 034. .. Respondent in all Appeals

Appeals under Section 260A of the Income-tax Act, 1961 against the common order dated 18.01.2008 on the file of the Income-tax Appellate Tribunal Bench 'C' Chennai, in I.T.A.Nos.1672/Mds/2005, 1762/Mds/2006 and 1514/Mds/2006 for the assessment years 2000-01, 2002-03 and 2002-03 respectively.

For Appellant (In all Appeals) : Mr.T.R.Senthil Kumar, Senior Standing Counsel

For Respondent (In all Appeals) : Mr.A.S.Sriraman

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COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals filed by the Revenue, under Section 260A of the Income-tax Act, 1961, are directed against the common order dated 18.01.2008, passed by the Income-tax Appellate Tribunal Bench 'C' Chennai, in I.T.A.Nos.1672/Mds/2005, 1762/Mds/2006 and 1514/Mds/2006 for the assessment years 2000-01, 2002-03 and 2002-03 respectively.

2.The above appeals have been admitted, on 23.01.2009, on the following substantial question of law:-

> *"Whether, on the facts and circumstances of the case, the Tribunal was right in allowing deduction under Section 80HHC of the Income Tax Act, on the basis of book profits under Section 115J of the Act and not on the basis of eligible profit under Section 80HHC of the Act as per normal computation?"*

3.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue; and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

4.The learned Senior Standing Counsel appearing for the Revenue fairly submits that the substantial question of law raised for consideration in this appeal has been answered against the Revenue in the case of **Commissioner of Income Tax vs. Bhari Information Technology Systems Private Limited, (2011) 15 SCC 539 :: (2012) 340 ITR 593.** The operative portion of the judgment read as follows:-

> *"4. In the said judgment of the Special Bench, which squarely applies to the facts of the present case, the Tribunal held that the deduction under Section 80-HHC (Section 80-HHE also falls in Chapter VI-A) is to be worked out not on the basis of regular income tax profits but it has to be worked out on the basis of the adjusted book profits in a case where Section 115-JA is applicable. In the said judgment the dichotomy between regular income tax profits and adjusted book profits under Section 115-JA is clearly brought out. The Tribunal in the said judgment rightly held that in Section 115-JA relief has to be computed under Section 80-HHC(3)/(3-A). According to the Tribunal, once the law itself declares that the adjusted book profit is amenable for further deductions on specified grounds, in a case where Section 80-HHC (Section 80-HHE in the present case) is operational, it become clear that computation for the deduction under those sections needs to be worked out on the basis of the adjusted book profit.*
>
> *5. In the present case we are concerned with Section 80-HHE which is referred to in the Explanation to*

> *Section 115-JA, clause (ix). In our view, the judgment of the Special Bench of the Tribunal in Syncome Formulations squarely applies to the present case. Following the view taken by the Special Bench in Syncome Foundations, the Tribunal in the present case came to the conclusion that deduction claimed by the assessee under Section 80-HHE has to be worked out on the basis of adjusted book profit under Section 115-JA and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business. The judgment of the Tribunal has been upheld by the High Court."*

5.Recording the submission made by the learned Senior Standing Counsel and following the decision in **Bhari Information Technology Systems Private Limited** (supra), the substantial question of law is answered against the Revenue.

6.Accordingly, the appeal filed by the Revenue is dismissed and the substantial question of law is answered against the Revenue. No costs.

(T.S.S., J.) (V.B.S., J.)
03.07.2019

Index : Yes/No
Speaking/Non-Speaking Order
abr

To

1.The Assistant Commissioner of Income-tax,
Company Circle VI(2), Chennai.

2.The Commissioner of Income-tax (A)V
121, Mahatma Gandhi Road, Chennai-600 034.

3.The Income-tax Appellate Tribunal Bench 'C' Chennai.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

T.C.(A).Nos.2190 to 2192 of 2008

03.07.2019