IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 25-02-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.No.2416 of 2008

M/s.Sharp Detective Pvt.Ltd. ... Appellant

-vs-

The Deputy Commissioner of Income Tax,
Company Circle IV (4),
Chennai. ... Respondent

Appeal under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, dated 15.02.2005, passed in ITA No.193/Mds/1999.

For Appellant : Mr.P.Ravishankar Rao,
for Mr.S.Balaji.

For Respondent : Mr.T.R.Senthil Kumar,
Senior Standing Counsel,
assisted by Mrs.K.G.Usha Rani,
Junior Standing Counsel.

JUDGMENT

(Judgment of the Court was delivered by **Dr.Vineet Kothari,J**.)

1. Both the learned counsel fairly submit that the controversy about the interpretation of the Proviso to Section 43B of the Income Tax Act,1961, which was omitted by the Finance Act,2003, with effect from 01.04.2004, was held by the Hon'ble Supreme Court to be applicable retrospectively from 01.04.1988, in the case of *Commissioner of Income Tax, Kolkata-III* v. *Alom Extrusions Limited*, (2009) 319 ITR 306 = (2010) 1 SCC 489.

2. However, they submit that since the said Supreme Court judgment was not available when the Tribunal passed the impugned order on **15.02.2005**, the matter deserves to be sent back to the learned Tribunal for deciding the appeal afresh in accordance with the decision of the Hon'ble Supreme Court in the case of *Alom Extrusions Limited*, referred to above.

3. The findings of the learned Tribunal in the impugned order, dated **15.02.2005**, are quoted below for ready reference :

"3. On consideration of the submissions, we are of the view that the order of the Commissioner (Appeals) is to be set aside. Admittedly, these payments were not made within the due dates under the relevant statutes. This fact is not denied by the learned Counsel for the assessee. However, the learned Counsel for the assessee attempted to persuade us to accept the amendment which is clarificatory, according to him. We are unable to accept the contention of the assessee's counsel, as the recent decision of the Hon'ble Jurisdictional High Court in the case of Madras Radiators & Pressings Ltd., cited supra, is directly on the point at issue. The payment which is not paid within the due date is to be disallowed under Section 43B of the Act. Therefore, the disallowance is justified. The Commissioner (Appeals) has followed the decision of the Tribunal in the case of Madras Radiators & Pressings Ltd., which was subsequently reversed by the Hon'ble Jurisdictional High Court. Therefore, we set aside the order of the Commissioner (Appeals)."

4. The Hon'ble Supreme Court, in the case of *Alom Extrusions Limited,* cited supra, has held as under :

"15. We find no merit in these civil appeals filed by the Department for the following reasons: firstly, as stated above, Section 43-B [main section], which stood inserted by Finance Act, 1983, with effect from 1st April, 1984, expressly commences with a non-obstante clause, the underlying object being to disallow deductions claimed merely by making a Book entry based on Merchantile System of Accounting. At the same time, Section 43-B [main section] made it mandatory for the Department to grant deduction in computing the income under Section 28 in the year in which tax, duty, cess, etc., is actually paid. However, Parliament took cognizance of the fact that accounting year of a company did not always tally with the due dates under the Provident Fund Act, Municipal Corporation Act [octroi] and other Tax laws. Therefore, by way of first proviso, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax, duty, cess or fee is paid before the date of filing of the Return under the Income Tax Act [due date], the assessee(s) then would be entitled to deduction. However, this relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer(s) should not sit on the collected contributions and deprive the workmen of the rightful benefits under

Social Welfare legislations by delaying payment of contributions to the welfare funds. However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only with effect from 1st April, 2004, would become curative in nature, hence, it would apply retrospectively with effect from 1st April, 1988. Secondly, it may be noted that, in the case of Allied Motors (P) Limited vs. Commissioner of Income Tax, reported in [1997] 224 I.T.R.677, the Scheme of Section 43-B of the Act came to be examined..."

5. In view of the aforesaid submission and subsequent decision of the Hon'ble Supreme Court, we allow the present Appeal of the Assessee, set aside the impugned order passed by the learned Tribunal and remand the matter back to the learned Tribunal for deciding the Appeal afresh in accordance with the law pronounced by the Hon'ble Supreme Court in the

aforesaid case of *Alom Extrusions Limited* within a period of six months from today. No costs.

Index : Yes/No (V.K.,J.) (C.V.K.,J.)
Internet : Yes/No 25-02-2019
Speaking / Non-Speaking Order
dixit

To

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

2.The Deputy Commissioner of Income Tax,
Company Circle IV (4),
Chennai.

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

dixit

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