

In the High Court of Judicature at Madras

Dated : 17.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.298 of 2008

The Commissioner of Income Tax,
Chennai

...Appellant

Vs

M/s.Ashok Leyland Ltd., Chennai-1

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 27.9.2007 made in ITA.No.2445/Mds/2005 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2000-01.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent: Mr.Vikram Vijayaraghavan for
M/s.Subbaraya Aiyer Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant – Revenue and Mr.Vikram Vijayaraghavan, learned counsel appearing on behalf of M/s.Subbaraya Aiyer Padmanabhan, learned counsel for the respondent – assessee.

2. This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 27.9.2007 made in ITA.No.2445/Mds/2005 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2000-01.

3. The appeal was admitted on 09.6.2008 on the following substantial questions of law :

"i. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to 10% depreciation on residential flats used for its employees? and

ii. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing deduction under Section 80HHC on the basis of book profits under Section 115JA and not on the basis of eligible profits under Section 80HHC as per normal computation ?"

4. The assessee is engaged in the business of manufacture and sale of vehicles. For the assessment year under consideration, the assessee claimed depreciation on 5 residential flats **plus** undivided share of land at 10%, which the Assessing Officer restricted to 5%. The assessee also claimed relief under Section 80HHC of the Act on the basis of book profits since the income was computed under Section 115JA of the Act and not as per the normal computation. The Assessing Officer held that the relief under Section 80HHC of the Act could only be calculated on the actual profits and not on the book profits.

5. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-7, Chennai. However, the appeal was dismissed by order dated 29.8.2005. As against that, the assessee preferred further appeal before the Tribunal. After placing reliance on the circular issued by the Board dated 12.12.1996, the Tribunal held that the quarters built for the employees of the company must be regarded as being used for the business of the company and that the assessee was entitled to 10% depreciation. The Tribunal also held that when the assessment was on the basis of book profits, export incentives should also be calculated as a percentage of the same. The Revenue is on appeal before us challenging the said finding of the Tribunal and raising the aforementioned substantial questions of law.

6. It is the submission of Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue that the Tribunal failed to take into consideration the fact that the assessee had not provided residential accommodation for all its employees, but provided only for five of such employees and that too, the residential accommodation is situated away from the business premises of the assessee, that therefore, the said Circular dated 12.12.1996 could not have been applied and that the CIT(A) was right in interpreting the said Circular by holding that the said Circular must have been issued in the context of employees' quarters built in the factory premises itself and not to residential flats acquired away from the factory though they might have been

used for the purpose of residence of the employees.

7. We have heard Mr.Vikram Vijayaraghavan, learned counsel appearing for the respondent – assessee on the above submissions.

8. The said Circular dated 12.12.1996 issued by the Central Board of Direct Taxes deals with allowance of depreciation and development rebate on assets provided at the residence of employees. For better appreciation, we quote the said Circular as hereunder :

"Board's F.No.10/14/66-IT(AI)

*Allowance of depreciation and development rebate on
assets provided at the residence of employees*

12/12/1966

*Depreciation Development Rebate
Sections 32, 33*

Attention is invited to the Board's Letter No. F. 10/97/63-IT(AI), dt. the 29th Feb., 1964, addressed to the CIT, in which instructions were issued, inter alia, that development rebate should not be allowed on air-conditioners and fans given by an employer for the personal use of the employees or directors at their residence, on the ground that the said plant and machinery were not wholly used for the purpose of the assessee's business.

2. The question has been re-examined by the Board recently in the light of Board's Letter F. NO. 9/26/IT/60, dt. the 21st March, 1960 in which it was clarified that quarters built by the employers for the accommodation of their employees must be regarded as buildings used for the purpose of the business and depreciation allowed thereon, where the occupation by the employee of the property owned by the employer is

subservient to and necessary for the purpose of their duties. It is considered that what applies to buildings applies also to the fans, air- conditioners and refrigerators fitted to those buildings, as those are amenities which virtually form part of such buildings.

3. On reconsideration therefore the Board have decided, in super session of the instructions issued in their letter dt. the 29th Feb., 1964, that fans, air- conditioners, refrigerators etc. provided by the employer at the residence of the employees should be considered to have been used wholly for the purpose of the employer's business and full depreciation as may be admissible in accordance with the rules, should be allowed in the assessment of the employer. Where such assets have been installed on or before the 31st March, 1965, development rebate may also be allowed in respect of these assets, if the rebate is otherwise admissible."

9. On a reading of the said Circular, it is seen that there is a reference to the earlier Circular/Instructions dated 21.3.1960, in which, it was clarified that the quarters built by the employers for the accommodation of their employees must be regarded as buildings used for the purpose of the business and depreciation allowed thereon where the occupation by the employee of the property owned by the employer is subservient to and necessary for the purpose of their duties. After referring to the Circular dated 21.3.1960, the Board reconsidered the matter and in super session of the Instructions in their letter dated 29.2.1964, it ordered that the fans, air- conditioners and refrigerators provided by the employer at the residence of

the employees should be considered to have been used wholly for the purpose of the employer's business and that full depreciation as may be admissible in accordance with the rules, should be allowed in the assessment of the employer. In our considered view, the said Circular dated 12.12.1996 will apply fully to the facts of the case.

10. The interpretation given by Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue does not merit acceptance for the reason that the said Circular dated 12.12.1996 does not restrict the benefit to the number of residential accommodation provided to the employees nor does it place any restriction that the residential accommodation provided by the employer should be situated within the factory premises or business premises of the assessee. Thus, we are required to interpret the said Circular dated 12.12.1996 issued by the Board in its letter and spirit and we are not expected to add any '**words**' or '**phrases**' in the Circular.

11. An identical issue came up for consideration before a Division Bench of the High Court of Punjab in the case of **CIT Vs. Delhi Cloth and General Mills Co. Ltd. [reported in (1966) 59 ITR 152]** wherein one of the questions, which was framed for consideration, was as to whether the assessee company therein was rightly assessed under Section 9 in respect of its income from buildings or lands appurtenant thereto, of which, it was the owner and which had been let to its own employees or wage earners. The Court, after referring to the Circular issued by the Board as published in Page

447 of the Income Tax Manual Part III, 10th Edition, held that the premises where the employees were housed, for which, they paid rental the company were in the near vicinity of the mills, that the rental of those premises were fixed and did not change with the change of the occupant, that the rental deducted from the wages of the employee or employees occupying the premises, that those employees were engaged in the main business of the company and their residence in the buildings in dispute was incidental to the main occupation i.e. the carrying on of the business of the company and that in true perspective, those buildings were part of the business equipment of the owner or in other words, it was the business asset of the owner. ***The above legal position will squarely apply to the facts of the present case.***

12. We have gone through the reasons assigned by the Tribunal and we find that the Tribunal rightly held that there was no such restriction in the Circular issued by the Board stating that the benefit would accrue to the assessee only if the residential accommodation is situated within the factory premises. Furthermore, the said Circular does not restrict the benefit only if the accommodation is provided to all the employees, which, obviously, is a business expediency and it is not for the Assessing Officer to sit in the arm chair of the assessee to decide as what would be best for their employees. Thus, ***the first substantial question of law is required to be answered against the Revenue and it is accordingly answered against the***

Revenue.

13. With regard to the second substantial question of law i.e. whether the Tribunal was right in allowing deduction under Section 80HHC of the Act on the basis of book profits under Section 115JA of the Act and not on the basis of eligible profits under Section 80HHC as per normal computation, this question was considered in the case of **CIT Vs. M/s.Prime Textiles Limited [TCA.No.13 of 2009 dated 14.11.2018]**, to which, **one of us (TSSJ) was a party**. This Court, after referring to the decision of the Apex Court in the case of **CIT Vs. Bhari Information Technology Systems Private Limited [reported in (2011) 15 SCC 539 : (2012) 340 ITR 593]**, answered the question against the Revenue. The relevant portions in the decision in the case of **Bhari Information Technology Systems Private Limited** are quoted as hereunder :

"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 80HHC (Section 80HHE also falls in Chapter VIA) 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 115JA is applicable. In the said judgment the dichotomy between regular income tax profits and adjusted book profits under Section 115JA is clearly brought out. The Tribunal in the said judgment rightly held that

in Section 115JA relief has to be computed under Section 80HHC(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 80HHC (Section 80HHE 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 80HHE which is referred to in the Explanation to Section 115JA, 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 80HHE has to be worked out on the basis of adjusted book profit under Section 115JA 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.”

14. An identical question was considered by us in the case of **CIT Vs. Sundaram Brake Linings [TCA.Nos.1351 to 1353 of 2008 dated 11.9.2018]**. In this decision, we referred to the decision **rendered by us** in the case of **CIT Vs. Bannari Amman Sugars Limited [TCA.No.163 of**

2009 dated 30.7.2018], the decision of the Hon'ble Supreme Court in the case of **Ajanta Pharma Ltd. Vs. CIT [reported in (2010) 327 ITR 305]** and the decision of the Hon'ble Supreme Court in the case of **Bhari Information Technology Systems Private Limited** and answered the question against the Revenue. We also noted the decision of the Division Bench in the case of **CIT Vs. M/s.Three Bags India Private Limited [reported in 2016 SCC Online Madras 27408]**.

15. In the light of the above legal position having been settled on the above lines, **the second substantial question of law is also required to be answered against the Revenue and is accordingly answered against the Revenue.**

16. In the result, the above tax case appeal is dismissed and the substantial questions of law are answered against the Revenue. No costs.

17.7.2019

Internet: Yes

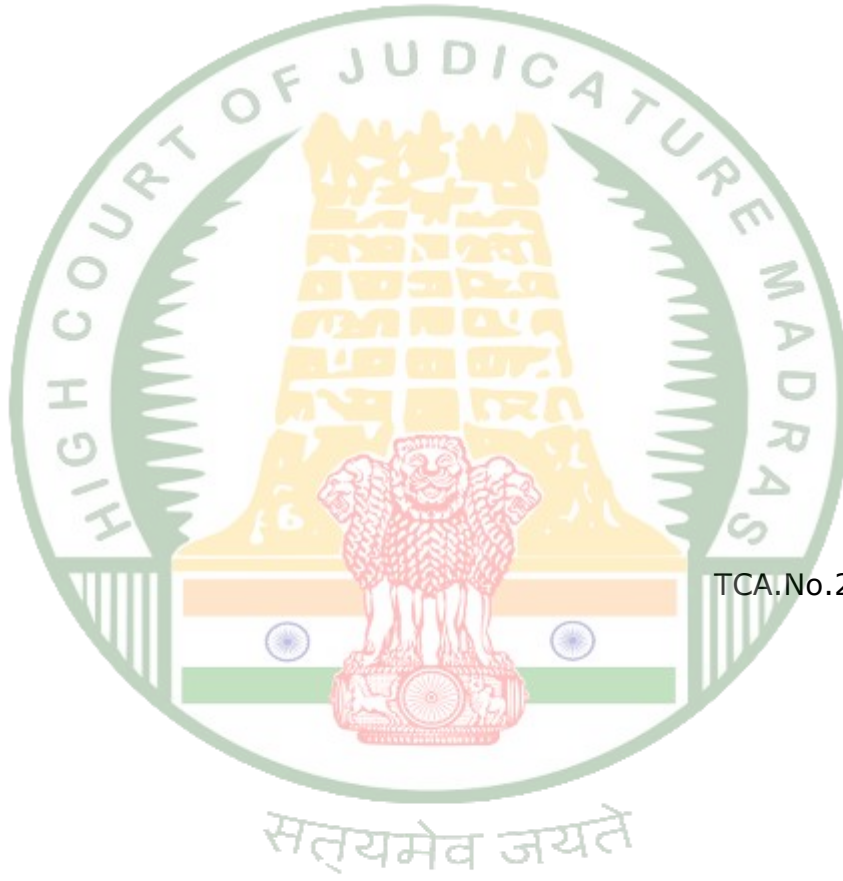
To
The Income Tax Appellate Tribunal, Chennai 'A' Bench.

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T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

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