IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM :

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

Tax Case Appeal No.345 of 2009

M/s. Ramco Industries Ltd.,
Auras Corporate Centre,
VI Floor, 98A,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. .. Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax
Circle -I, Virudhunagar. .. Respondent/Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, Chennai, dated 28.01.2009 in I.T.A.No.2665(Mds)/2005 for the assessment year 2002-2003 preferred against the order dated 31.08.2005 made in I.T.A.No.58/2005-2006 on the file of the Commissioner of Income Tax (appeals)II Madurai filed against the assessment order dated 28.03.2005 on the file of the Assistant Commissioner of Income Tax, Circle I, Virudhunagar for the assessment year 2002-2003.

For Appellant : Mr.P.J.Rishikesh

For Respondent : Ms.S.Premalatha
Junior Standing Counsel
for M/s.M. Swaminathan
Senior Standing Counsel

J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) is directed against the order dated 28.01.2009 passed by the Income Tax Appellate Tribunal Madras 'D' Bench in I.T.A.No.2665(Mds)/ 2005 for the Assessment Year 2002-03.

2. We have heard Mr.P.J.Rishikesh, learned counsel appearing for appellant/assessee and Ms.S.Premalatha, learned Junior Standing counsel for the respondent/revenue.

3. The above appeal has been admitted on 10.02.2010 on the following substantial questions of law:

> "1. Whether in facts and circumstances of the case "Commission to sole selling agent" should be included in the total turnover when actually the said sum is not received by the assessee at all?
>
> 2. Whether in facts and circumstances of the case is it not the duty of the tribunal to give detailed and reasoned order when the tribunal itself has concluded that neither the assessing officer nor the CIT(A) have not discussed the issues in detail?
>
> 3. Whether in facts and circumstances of the case the Tribunal can merely rely on 295 ITR 228 for each and every issue when the issue pertaining to the same has not been discussed in detail?
>
> 4. Whether in facts and circumstances of the case "Royalty income" which treated as business income, can be excluded under clause (baa) of Section 80HHC?
>
> 5. Whether in facts and circumstances of the case of the Tribunal was right in upholding the order of the CIT(A) in holding that the interest and profit of sale of assets do not qualify for deduction under Section 80 IB as profits not derived from industrial undertaking?
>
> 6. Whether in facts and circumstances of the case "License fee" received for Makshi unit, can be under clause (baa) of Section 80HHC even though there is no reference to "License fee" in clause (baa)?"

4. So far as the first question is concerned, the same has to be considered in favour of the assesee. In the earlier decision in the assessee's own case for the Assessment Year 2003-04 and 2004-2005 in ITA.Nos. 1850 and 2264/Mds/2007, the appeal filed by the Revenue against the said order of the Tribunal was dismissed. Accordingly, substantial question of law No.1 has decided in favour of the assessee.

5. So far as substantial questions of law Nos.2 to 6 are concerned in the assessee's own case for the Assessment Years 2003-04 and 2004-05, the questions were considered against the assessee and such decision was upheld by this Court. Therefore, substantial questions of law Nos.2 to 6 have to be answered in favour of the Revenue and against the assessee.

6. In the result, the appeal is partly allowed and substantial question of law No.1 is answered in favour of the assessee and substantial questions of law Nos.2 to 6 are answered against the assessee and in favour of the Revenue. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
1. The Deputy Commissioner of Income Tax
Circle -I, Virudhunagar.

2.The Commissioner of Income Tax Appeals II
Madurai.

3.The Assistant Commission of Income Tax Circle I
Virudhunagar.

+1 CC to Mr.P.J.Rishikesh, Advocate sr 55509.
+1 CC to M/s.S. Premalatha, Advocate sr 55066.

RSI(CO)
SP(27/07/2019)