IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case No.998 of 2008

M/s.Fenner(India) Ltd.,
3, Madurai-Melakkal Road,
Madurai 625 016.
(Cause title accepted vide order of court dt. 10.6.08 in M.P.No.1/2008 in TC SR 49039/06) ... Appellant

Vs.

The Joint Commissioner of Income Tax
Special Range II, Madurai. ... Respondent

Tax Case filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dated 30.12.2005 made in ITA No.787/Mds/2000 against the order of the Commissioner of Income tax (Appeals) IX,Chennai dated 31.01.2000 and made in ITA.NO.187/98-99 and against the order of the Deputy Commissioner of Income tax Special Range II,Madurai dated 23.02.1998 for the assessment Year 1995-96.

For Appellant : Mr.Venkatnarayanan for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.M.Swaminathan Senior Standing Counsel assisted by Ms.V.Pushpa, Jr.Standing Counsel

JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

Learned counsel appearing for the parties would submit that the controversy in the present case is covered by a decision of a co-ordinate Bench of this court in which one of us (Dr.Vineet Kothari, J) was a party, in Tax Case Appeal Nos.326, 327 and 336 of 2009 dated 25.1.2019.

2. The Bench, in that case, held as under:-

> "17. Per contra, the assessee relies upon a decision of this Court in the case of Dharmapuri Co-operative Sugar Mills Ltd. (supra), wherein this Court considered the

claim of sugar mills in respect of additional consideration towards purchase of cane after the close of the accounting year as well as purchase tax liability. The claim was negated by the Income Tax Officer, who held that the amount could not been reckoned for the year in which the cane had been received, but could be taken into account only in the subsequent year, that is when the payment had, in fact, been effected. The question raised for the consideration of the Bench was whether additional liability towards cane purchased and additional purchase tax as per Government Order dated 14.10.1982 was allowable as a deduction in respect of Assessment Year 1982-83.

18. The Bench concluded that the additional liability borne towards sale consideration as well as purchase tax, arose by virtue of the assessee having received the produce prior to 30th September, 1981. The quantification and discharge of liability subsequently would not disentitle the assessee from claiming the amount as a deduction for the previous year. In that context, the Bench states thus:

> 'It is well settled that the liability for payment of tax, even though determined finally long after the end of the accounting year must be regarded as relating back to the time of which the liability for payment of tax had been incurred and that the date of determination of the final liability is not decisive as to the year for which the assessee can claim the deduction.'

19. We may also usefully refer to the observations of the Bench in the context of the mercantile system of accounting that the assessee followed in that case, as well as in the case on hand. The Bench observed that all liabilities that an entity incurred required to be reflected properly in the financial accounts in order to arrive at a correct ascertainment of profits. The mere fact that the liability in regard to manufacture or sale of products arose subsequent to the close of the accounting year would not mean that such liabilities or costs should not be taken into account to arrive at the profits

in relation to said manufacture or sale. If this were done, it would distort the profits, which is not the object of the Act. In this view of the matter, the claim of the assessee was allowed.

20. We are of the view that the ratio of the decision in the case of Dharmapuri Co-operative sugar mills (supra) is applicable to the facts of the present case on all fours. The liability, as far as bonus is concerned, has been crystallised even prior to the due date for filing of return and hence the provision made for the present assessment year is in order.

21. Accordingly, the substantial question of law raised and admitted in T.C. (A)No.327 of 2009 is answered in favour of the assessee and against the Revenue. The Tax Case (Appeal) No.327 of 2009 is allowed. No costs."

3. The substantial question of law in the present case is also similar, which is quoted below:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the additional liability of bonus accruing under the Payment of Bonus Ordinance, 1995, cannot be allowed as a deduction in the current assessment year 1995-96?"

4. In view of the fact that the matter is covered by the decision of a co-ordinate Bench of this Court in the case of the same Assessee itself, we dispose of the present Appeal in same terms and we answer the question of law also in the same terms. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssk.

To

1.The Income Tax Appellate Tribunal, 'C' Bench, Chennai
2.The Commissioner of Income tax Appeals(IX), chennai
3.The Joint Commissioner of Income Tax
Special Range II, Madurai.
4.The Deputy Commissioner of Income tax Special Range
II,Madurai

+1cc to M/s.Subbaraya Aiyar Padmanabhan,Advocate SR. 77652

T.C.No.998/2008

A.SK(08/11/2019)