IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).Nos.998, 999 and 1000 of 2009

M/s. Vigneswar Tex,
533, Avinashi Road, Tirupur. .. Appellant in all TCAs

..Vs..

The Income Tax Officer, Ward I (3),
Tirupur .. Respondent in all TCAs

Prayer in all TCAs : Tax Cases (Appeals) are filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 29.01.2009 passed in I.T.A.NO.2048/Mds/2007, I.T.A.No.2049/Mds/2007 and I.T.A.No.2050/Mds/2007 respectively, for the Assessment Year: 1995-96, 1996 - 97 and 1997 - 98 respectively against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D' Chennai dated 25.08.2006 made in I.T.A.NO.216 to 219/mds/05 and against the order of the Commissioner of Income Tax (Appeals)II, Coimbatore dated 10.11.2004 made in I.A.A.No.170-C/02-03 Assessment year 1995-1996, 1996-1997 & 1997-1998.

For Appellant : Mr.R.Kumar
(in all TCA's) for T.N.Seethuaraman

For Respondent : Mr.T.R.Senthikumar
(in all TCAs) for K.G.Usha Rani
Sr.Standing counsel

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI, J.)

The Assesee has filed these Appeals against the order of the learned Income Tax Appellate Tribunal dated 29.01.2009 by which the Assessee's Appeals were dismissed for Assessment Years 1995-96, 1996-97, 1997-98 on the issue relating to validity of the reassessment proceedings under Section 147 of the Act on merits and the issue relating to availability of deduction under Section 80 HHC on the interest earned by the Assessee on the bank deposits.

2. The relevant portion of the order of Tribunal is quoted below for ready reference.

> "4. In the present appeal, the question cropped up for our consideration was whether the assessee could raise the question of validity of jurisdiction assumed by the Assessing Officer under Sec.147 in the course of proceedings taken pursuant to the restoration of the appeals to the first appellate authority by the Tribunal.
>
> 5. We find that this issue stands covered in favour of the Revenue by the decision of the Hon'ble Madras High Court rendered in the case of M.S.P. Senthil Kumar v.CIT [241 ITR 502]. No contrary decision of binding nature was brought before us. We, therefore, respectfully following the precedent, decide this issue in favour of the Revenue and against the assessee.
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> 6. Adverting to the merits of the case, we find that the only issue put forth before us was in relation to allow ability of deduction under sec.80HHC in the context of bank deposits. We find that this issue stands adjudicated against the assessee by the decision of the Hon'ble Jurisdictional High Court rendered in the case of Dollar Apparels vs.ITO [2007] 294 ITR 484. In this case, the Hon'ble High Court has held that income earned from bank deposits cannot be considered as income from export. There exists no nexus between the interest income and export earning. Respectfully following the precedent, we decide this issue also in favour of the Revenue and against the assessee.
>
> In the result, the appeals filed by the assessee stand dismissed. "

2. These Appeals were admitted by the Co-ordinate Bench of this Court on 27.10.2009 on the following substantial questions of law:

> "Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that, the question of validity of jurisdiction assumed by the Assessing Officer under Section 147 cannot be raised in the Course of the proceedings taken pursuant to the restoration of the appeal to the first appellate authority by the Tribunal?"

3. The learned counsel for the Assesee urged before us that the question of Validity of reassessment proceeding under

Section 147 of the Act, which was raised before CIT (Appeals) after the remand by the learned Tribunal at the first instance vide order dated 25.08.2006 has not been decided by the CIT (Appeals) on the ground that the learned Tribunal has only remanded the issue back to the CIT (Appeals) on the question of availability of deduction under Section 80HHC with respect to interest income earned as to whether the interest receipt is an "Income from Other Sources" or an "Income from Business" and therefore the learned Tribunal ought to have decided the said question of validity of reassessment proceedings also, while deciding the question of availability of deduction in respect of the interest on Bank Deposit. He has drawn our attention to the decision relied on by the Tribunal in the case of Dollar Apparels Vs. ITO [(2007) 294 ITR 484] in which it has been held that the interest on Bank Deposit, if earned during the course of business can be considered for the benefit under Section 80 HHC of the Act.

4. The learned counsel for the Revenue however submitted that the Assessee had not raised the question of validity of proceedings under Section 147 of the Act before the learned CIT (Appeals) as is clear from the finding of the learned CIT (Appeals) in its order dated 18.06.2007 that "The order of the ITO Ward, I(3) TPR is erroneous in law as unsustainable in the facts and circumstances of our appellant's case". He submitted that this ground raised by the CIT (Appeals) cannot be construed as challenging the jurisdiction for reassessment under Section 147 of the Act initiated on the basis of the Audit Objection, as is sought to be contended before this Court now. He further submitted that the learned Tribunal while passing the order dated 29.01.2009 had wrongly passed the order against the Assessee on merits in view of the case in Dollar Apparels stated supra.

5. Having heard the learned counsel for the parties we are satisfied that as far as the question of jurisdiction for reassessment under Section 147 is concerned, the Assessee having not raised the said question in clear terms before the authorities below cannot be permitted to raise the said question now as an after-thought. The said contention of the Assesee is liable to be rejected and the same is accordingly rejected. Thus, the question framed for consideration on 27.10.2009 is answered as against the Assesee and in favour of the Revenue.

6. However on merits of claim u/s. 80 HHC since at a later point of time, this Court after taking into consideration the earlier decisions of this Court in the case of M/s. AVM Cine Products Vs.The Deputy Commissioner of Income Tax [Tax Case Appeal Nos.884 & 885 of 2005 dated 22.02.2019] has held that interest on Bank Deposits earned in the ordinary course of business, is taxable as Business income and is excluded from

Section 56 of the Act, in 'Income from Other Sources" we are of the opinion that the Tribunal should consider the issue again in view of the later decisions of this Court viz., M/s.Ashok Leyland Ltd Vs. The Deputy Commissioner of Income Tax [T.C.A.No.851 of 2008 dated 03.04.2018] and M/s. AVM Cine Products Vs. The Deputy Commissioner of Income Tax[Tax Case Appeal Nos.884 & 885 of 2005 dated 22.02.2019]. Therefore, we remit the matter back to the learned Tribunal to decide the said issue afresh on merits in view of the latest decisions of this Court .

In the result, these Tax Case Appeals are disposed of, with the aforesaid observations. No order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Chennai 'D' Bench
   Chennai.

2. The Commissioner of Income Tax (Appeals)II
   Coimbatore.

3. The Income Tax Officer
   Ward I(3) Tirupur.

+1 CC to Mr.T.R.Senthikumar, Advocate sr 21904.
+1 CC to Mr.T.N.Seetharaman, Advocate sr 27551.

T.C.(A).Nos.998 to 1000 of 2009

BR(CO)
SP(22/04/2019)