IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-04-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

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

T.C.A.No.1046 OF 2010

M/s.Ambadi Enterprises Ltd.
Parry House 5th Floor
No.43, Moore Street
Chennai 600 001. ...Appellant/Appellant

-vs-

The Deputy Commissioner of Income Tax,
Company Circle – I (1),
No.121, Nungambakkam High Road,
Chennai- 600 034. ...Respondent/Respondent

Appeal under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 27.11.2009, passed in ITA No.269/Mds/2009 against the order of Commissioner of Income Tax (appeals) VIII, Chennai dated 31.12.2008 and made in I.T.A. No. 55/07-08 against the assessment order dated 18.12.2006 of Assistant Commissioner of Income Tax, Company Circle I(1) Chennai in AAACA6374J/AX2-065 for the Assessment year 2001-2002.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent: Mr.T.Ravikumar,
Senior Standing Counsel.

JUDGMENT
(By Dr.Vineet Kothari,J.)

Assessee has filed this Appeal under Section 260A of the Income Tax Act, in short, 'Act', raising the Substantial Questions of Law, arising from the order of the learned Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 27.11.2009, passed in ITA No.269/Mds/2009, whereby, the learned Tribunal dismissed the Appeal of the Assessee for Assessment Year 2001-2002.

2. The Questions of Law, suggested by the Assessee in this Appeal, are as follows :

> ''1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the jurisdiction of the Assessing Officer to reopen the assessment u/s.147 of Income Tax Act,1961 ?
>
> 2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that interest paid on inter corporate deposits and interest received on inter corporate deposits (loans and advances) should not be allowed netting while applying Explanation (baa) to Section 80HHC for exclusion of 90% of such interest ?''

3. However, a Co-ordinate Bench of this Court, on 09.11.2010, admitted only one Question of Law, regarding jurisdiction of the Assessing Officer under Section 147 of the Act. The second Question of Law, regarding Netting of Interest for the purpose of applying Explanation (baa) to Section 80HHC of the Act, was not admitted, in view of the decision of a Division Bench of this Court in the case of Commissioner of Income Tax v. V.Chinnapandi, (2006) 282 ITR 386 (Mad).

4. Learned counsel for the Assessee, however, submitted, that, later on, the Hon'ble Supreme Court has set at rest the said controversy in the case of ACG Associated Capsules Pvt. Ltd. v. Commissioner of Income Tax, decided on 08.02.2012, (2012) 343 ITR 89, in which, the Hon'ble Supreme Court has held as under :

> ''3. We have held in our judgment in the case of M/s ACG Associated Capsules Pvt. Ltd. v. Commissioner of Income Tax that ninety per cent of not the gross interest but only the net interest, which has been included in the profits of the business of the assessee as computed under the heads `Profits and Gains of Business or Profession' is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business. Since, the view taken by the High Court in the impugned order is consistent with our aforesaid view, we find no merit in this appeal and we accordingly dismiss the same. There shall be no order as to costs.''

5.In the light of the aforesaid settled position, learned counsel for the Assessee submitted that the question regarding Netting of Interest for the purpose of Explanation (baa) to Section 80HHC of the Act, on which this Appeal was not admitted, deserves to be answered in favour of the Assessee now, with a formal admission of the Appeal on that Question also.

6. Learned Senior Standing Counsel for the Revenue does not fairly dispute the subsequent decision of the Hon'ble Supreme Court in the case of ACG Associated Capsules Pvt. Ltd., cited supra.

7. In view of the aforesaid submission, Question No.2 with regard to Netting of Interest is also admitted.

8. Having heard the learned counsels for the parties and in view of the decision of the Hon'ble Supreme Court in the case of ACG Associated Capsules Pvt. Ltd., referred to above, the Question of Netting of Interest, now admitted by us, deserves to be answered in favour of the Assessee and against the Revenue. We, accordingly, do so.

9. In view of the aforesaid Question regarding jurisdiction of Assessing Authority under Section 147 of the Act having been not pressed by the learned counsel for the Assessee, this Appeal of the Assessee is allowed, answering Question No.2 in favour of the Assessee and against the Revenue. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2.The Deputy Commissioner of Income Tax,
Company Circle - I (1),
No.121, Nungambakkam High Road,
Chennai- 600 034.

3.The Commissioner of Income Tax Appeals VIII
121, Nungambakkam High Road
Chennai 34.

4.The Assistant Commissioner of Income Tax
Company Circle I(1) Chennai
+1 CC to Mr.T.Ravikumar, Advocate sr 36131.
+1 CC to Mr.Philip George, Advocate sr 36176.

T.C.A.No.1046 OF 2010

GJ(CO)

SP(12/06/2019)