In the High Court of Judicature at Madras

Dated : 19.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1265 of 2010

Commissioner of Income Tax
-I, Chennai ...Appellant/Respondent

Vs

M/s.DSM Soft Pvt. Ltd., Chennai-20. ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.6.2010 made in ITA.No.11/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2004-05, as against the orders dt.08/12/09 of the Commissioner of Income Tax in ITA.416/07-08 & TA.47/07-08 and as against the order dt.27/12/07 of the Income Tax Officer, Chennai for the assessment year 05-06 and as against the order dt.24/12/07 of the Income Tax Officer Chennai, for the assessment year 2004-05 in GI NO./PAN.No.AAACD3149A.

For Appellant: Mrs.R.Hemalatha, SSC

For Respondent: Mr.R.Sivaraman

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent – assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 11.6.2010 made in ITA.No. 11/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2004-05.

3. The appeal was admitted on 07.2.2011 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of interest on borrowed capital diverted for giving interest free loans to the group concerns of the assessee viz. M/s.Margon Industries Ltd., and M/s.DSM Infosystems P. Ltd., and for investment in the equity shares of the assessee's subsidiary company M/s.DSM Deodata Ltd., applying the decision of the Supreme Court in 288 ITR 1 without considering the difference in the facts involved in the assessee's case ?
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> ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the belated remittance of employees' contributions to Provident Fund and Employees' State Insurance could not be disallowed disregarding the provision under Section 36(1)(va) and Section 2(xiv) and without appreciating that the decision of the Supreme Court in 213 CTR 268 was not applicable to employees' contribution to PF and ESI ?
>
> iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of the claim of bad debts even though the assessee had claimed only a provision for bad debts without appreciating that the Commissioner of Income Tax (Appeals) had allowed the claim after admitting and considering additional evidence in violation of Rule 46A and without giving an opportunity to the Assessing Officer to examine such additional evidence ?
>
> iv. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in giving the

direction mentioned in the preceding question without appreciating that the Commissioner of Income Tax (Appeals) had allowed the claim after admitting and considering additional evidence under Rule 46A and without giving an opportunity to the Assessing Officer to examine the same ? And

v. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the export proceeds transferred to its wholly owned foreign subsidiary could be treated as having been remitted to India in foreign exchange within the stipulated time even considering Explanation 2 to Section 10A(3)?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Income Tax Officer(OSD),
Company Circle 1(4), Chennai.

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3.The Commissioner of Income Tax,
Appeals III, Chennai-34.

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