

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM :

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

TCA.No117 of 2018

Commissioner of Income Tax,
Chennai.

.. Appellant

vs.

M/s. S L Lumax Ltd
G-15 Spcot Industrial Park,
Irrungattukotai
Sripermbadur 602 105.

.. Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai, dated 21.10.2016 in I.T.A.No.1578/Mds/2016 for the assessment year 2010-2011 against the order of the Commissioner of Income Tax(A)-15 dated 25.02.2016 made in I.T.A.No.544/CIT(A)-15/13-14 and against the Deputy Commissioner of Income Tax Company Circle-VI(1) Chennai 34 dated 30.10.2013 made in PAN.No. AAACL18578.

For Appellant : Mr. T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : Mr.R.Venkatanarayanan
for Mr.Subbaraya Padmanabhan

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 21.10.2016 passed by the Income Tax Appellate Tribunal Madras 'C' Bench in I.T.A.No.1578/mds/2016 for the Assessment Year 2010-2011.

2.The revenue has filed this appeal raising the following substantial questions of law:

" (i) Whether on the facts and in the circumstances of the case the order of the Tribunal erroneous in law and perverse on facts.

(ii) Whether on the facts and in the circumstances of the case the order of the Tribunal was right in holding that the remission of the loan liability by availing the early repayment and discount scheme of the Government with respect to the deferred sales tax under Interest Free Sales Tax deferral scheme is not income under Section 28(iv) r.w. 41(1) of the Act, even though the assessee had collected a sum of Rs.5,79,43,346/- as sales tax and had paid only an amount of Rs.3,58,79,577/- and had retained the balance income of Rs.2,20,63,219/-

(iii) Whether on the facts and in the circumstances of the case the Tribunal was right in not following the decision of the jurisdictional High Court in the case reported in 384 ITR 530 (Mad)."

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Venkatanarayan, learned counsel for M/s. Subbaraya Aiyar Padmanabhan and Ms.Ramamani, learned counsel for the respondent/assessee.

4. The revenue preferred an appeal before the tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)-15' (hereinafter referred to as CIT(A)) in ITA.No.544/CIT(A)-15/13-14 dated 25.02.2016 by which the CIT(A) deleted the addition of Rs.2,20,63,819/- made by the Assessing Officer under Section 41(1) read with Section 28(iv) of the Act.

5. The assessee has availed deferral scheme for sales tax liability called interest free sales tax deferral scheme introduced by Government of Tamil in the year 1990. In terms of said scheme, the eligible units are allowed to collect sales tax and retain for a prescribed period. The assessee opted under the scheme for nine years and after such period, the sales tax collected by the assessee should be remitted by it either in lumpsum or in installments. The Government of Tamil Nadu vide order in G.O(Ms).NO.48 had allowed an option to persons taking the benefit of deferral scheme, to pay the deferred tax in one lumpsum at the discounted rate of 8%. The assessee availed the benefit under the said G.O., thereby the assessee received a

rebate of Rs.2,20,63,819/-. The Assessing Officer has opined that the assessee has received benefit, which would fall under Section 41(1) read with Section 28(iv) of the Act and therefore made the addition.

6. The assessee challenged the same by filing an appeal before the CIT(A), which was allowed by following the decision of the High Court of Karnataka in CIT Vs.Mcdowell & CO Ltd reported in 369 ITR 684 and the decision of the High Court of Bombay in the case of CIT Vs. Sulzar India Ltd reported in 369 ITR 717, wherein it was held that Section 41(1) of the Act was not attracted to such benefit on account of pre-payment at discounted rate.

7. The revenue preferred an appeal before the Tribunal contending that the similar issue was decided in favour of the revenue by the Hon'ble Supreme Court in CIT Vs. Thirumalaiswamy Naidu & Sons reported in 230 ITR 534 (SC). The Tribunal after considering the case of the revenue, held in our view correctly that Thirumalaiswamy Naidu & Sons (supra) was clearly distinguishable on facts and rightly followed the decision in Mcdowell & Co Ltd (supra).

8. We had an occasion to consider a similar issue in the case of CIT Vs. Wheels India Ltd, wherein identical issue came up for consideration noting that the tribunal in the said case, rightly took note of the decision of the Bombay High Court reported in [2014] 369 ITR 717 (Bombay), which was affirmed by the Hon'ble Supreme Court in CIT Vs. Balkrishna Industries Ltd reported in [2017] 88 taxmann.com 273 (SC) dismissing the appeal filed by the revenue by judgment dated 11.06.2019. The operative portion of the order reads as follows:

"4.The Tribunal has followed the assessee's own case decided by the Special Bench of the Tribunal at Mumbai in the case of Sulzer India Ltd. vs. JCIT reported in 138 ITD 137. The said decision was challenged before the Hon'ble High Court of Bombay, which was dismissed by judgment dated 05.12.2014 reported in [2014] 369 ITR 717 (Bombay). The decision of the Hon'ble High Court of Bombay was affirmed by the Hon'ble Supreme Court in CIT vs. Balkrishna Industries Ltd., reported in [2017] 88 taxmann.com 273 (SC). The Hon'ble Supreme Court approved the said decision of the Bombay High Court wherein it was held as follows:-

"The argument of the revenue is not that the assessee having paid Rs.3.37 crores has obtained for himself anything in terms of section 41(1), but the assessee is deemed to have received the sum of Rs.4.14 crores, which is the difference between the original amount to be remitted with the payment made. The revenue terms this as deemed payment by the State to the assessee. The Tribunal has found that the first requirement of section 41(1) is that the allowance or deduction is made in respect of the loss, expenditure or a trading liability incurred by the assessee and the other requirement is the assessee has subsequently obtained any amount in respect of such loss and expenditure or obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As rightly noted by the Tribunal, the Sales Tax collected by the assessee during the relevant year was treated by the State Government as loan liability payable after 12 years in 6 annual/equal instalments. Subsequently and pursuant to the amendment made to the 4th proviso to section 38 of the Bombay Sales Tax Act, 1959, the assessee accepted the offer of SICOM, the implementing agency of the State Government, paid certain amount to SICOM, which, according to the assessee, represented the NPV of the future sum as determined and prescribed by the SICOM. In other words, what the assessee was required to pay after 12 years in 6 equal instalments was paid by the assessee prematurely in terms of the NPV of the same. That the State may have received a higher sum after the period of 12 years and in instalments. However, the statutory arrangement and vide section 38, 4th proviso does not amount to remission or cessation of the assessee's liability assuming the same to be a trading one. Rather that obtains a payment to the State prematurely and in terms of the correct value of the debt due to it. There is no evidence to show

that there has been any remission or cessation of the liability by the State Government."

5.While affirming the order passed by the High Court of Bombay, the Hon'ble Supreme Court in Balkrishna Industries Ltd. (supra) held that the approach of the High Court of Bombay is without any blemish, inasmuch as all the requirements of Section 41(1) of the Act could not be fulfilled in the case on hand.

6.In the light of the above, the appeal filed by the Revenue fails and the same is dismissed and the substantial questions of law are answered against the Revenue."

9.The Revenue cannot dispute the fact that the above decision, which has been rendered by the Hon'ble Supreme Court in Balkrishna Industries Ltd. (supra) is clearly applicable to the facts of the present case. Thus, we find there is no error in the order passed by the Tribunal. In the result, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the revenue. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mp/ska
To

1.The Income Tax Appellate Tribunal
Madras " C" Bench
Chennai.

2.The Commissioner of Income Tax(A) -15, Chennai 34.

3.The Deputy Commissioner of Income Tax, Company Circle VI(1)
Chennai 34.

+1 CC to Mr.T.R.Senthil Kumar, Advocate sr 54855.

+1 CC to Mrs. Subbaraya Aiyar Padmanabhan, Advocate sr 54857.

TCA.No117 of 2018

EV(CO)
SP(24/07/2019)