IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.Nos.135 and 136 of 2018

The Commissioner of Income Tax,
Chennai. ... Appellant in both appeals

Vs

M/s.Technical Stampings Automotive Ltd.,
(now known as M/s.Sungwoo Gestamp Hitech Ltd) G17-18, SIPCOT Industrial Estate Irungattukottai, Sriperampudur. ... Respondent in both appeals

COMMON PRAYER: Tax Case Appeals in T.C.A.Nos.135 and 136 of 2018 filed under Section 260A of Income Tax Act, 1961 against the orders dated 09.06.2016 in ITA Nos.1692/Mds/2014 and 1693/Mds/2014 respectively on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment years 2002-03 and 2007-08 respectively against the order dated 27/02/2014 made in ITA.Nos.1258 & 1389/2013-14 passed by the Commissioner of Income Tax (Appeals) - III, Chennai-34 and against the order dated 30.11.2007 and 31/12/2010 passed by the Assistant Commissioner of Income Tax, Company Circle III (2), Chennai for the Assessment Year 2002-03 and 2007-08 respectively.

For Appellant : Mr.J.Narayanasamy
in both appeals

For Respondent: Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar Padmanabhan
in both appeals

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The assessee company is engaged in the manufacture of sheet metal components, assemblies and sub-assemblies. In the reassessment proceedings, the Assessing Officer rejected the assessee's claim that the royalty paid to M/s.Sungwoo High Tech Company Limited, Korea towards technical know-how was a revenue expenditure and treated royalty payment as capital expenditure. Challenging the Assessment Orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals) and the CIT (Appeals) held that the royalty payment is to be treated as revenue expenditure. The orders of the CIT (Appeals) were taken on appeal by the Revenue before the Income Tax Appellate Tribunal. The Tribunal confirmed the orders of the CIT (Appeals), aggrieved by which, the Revenue has filed the present appeals.

2.These Tax Case Appeals were admitted on 06.06.2018 on the following substantial question of law;

> "Whether royalty paid by the assessee to its holding company M/s.Sungwoo Hitech Company Limited, Korea for use of technical know-how is to be treated as revenue expenditure ?"

3.Heard Mr.J.Narayanasamy, learned counsel for the appellant and Mr.Venkat Narayanan, learned counsel appearing for the respondent.

4.The learned counsel for the appellant would submit that the tax effect in this case is less than Rs.50,00,000/- and is covered by Circular No.3/2018 dated 11.07.2018 issued by the Director, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, Delhi. As per the said circular, the monetary limit to file an appeal before the High Court is fixed at Rs.50,00,000/-. In this case, tax effect is less than Rs.50,00,000/- and therefore, these cases have to be dismissed.

5.This Court perused the circular dated 11.07.2018 and Paragraph Nos.2 & 3 of the Circular prescribe monetary limit for filing appeal. Paragraph Nos.2 & 3 are usefully extracted as follows:

> "2.In supersession of the above circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs / appeals before Supreme Court keeping in view the monetary limits and conditions specified below
>
> 3.Henceforth, appeals / SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given under:

S.No.	Appeals / SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appeallate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000"

6.In view of the submissions made by the learned counsel appearing on behalf of the appellant and also in view of the Circular No.3/2018 dated 11.07.2018 issued by the

Director, Central Board of Direct Taxes, Delhi, these Tax Case Appeals are dismissed on account of tax effect. However, the substantial questions of law framed is left open. In the event the tax effect is above the limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

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

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

3.The Assistant Commissioner of Income Tax, Company Circle III (2), Chennai.

4.The Director, Central Board of Direct Taxes, Delhi.

+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No. 98605
+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 97919

T.C.A.Nos.135 & 136 of 2018

SAI(CO)
GN(10/01/2020)