In the High Court of Judicature at Madras

Dated : 30.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.537 to 539 of 2016
& CMP.Nos.10641 & 10642 of 2016

Principal Commissioner of Income
Tax-3, Coimbatore-18. ...Appellant in all the appeals

Vs

M/s.Cotton Blossom (India) P. Ltd.,
Tirupur-641606. ...Respondent in all the appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.12.2015 made in ITA.Nos.583/Mds/2014 and 1531 & 1604/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench respectively for the assessment years 2009-10, 2008-09 and 2008-09.

Against the order dated 24/12/2013 and 31/03/2015 made in IT(A) No.228/11-12 & IT(A) No.144/2010-11 passed by the commissioner of Income Tax (Appeals)-II, Coimbatore and Commissioner of Income Tax(Appeals)-3, Coimbatore and against the order dated 20/12/2010 & 21/12/2011 passed by the Assistant Commissioner of Income tax, company circle, Tirupur and Joint Commissioner of Income Tax, Tirupur Range, Tirupur respectively.

For Appellant: Mr.T.R.Senthilkumar, SSC assisted by
Ms.K.G.Usharani, SC

For Respondent:Mr.R.Venkatanarayanan for
M/s.Subbaraya Aiyer Padmanabhan

COMMON JUDGMENT
(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.R.Venkatanarayanan, learned counsel appearing for the respondent - assessee.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 31.12.2015 made in ITA.Nos.583/Mds/2014 and 1531 & 1604/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench respectively for the assessment years 2009-10, 2008-09 and 2008-09.

3. The Revenue has filed TCA.Nos.537 and 538 of 2016 by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the payment made under the employer employee insurance scheme is covered under Section 37(1) of the Income Tax Act ? And
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal is justified that the payments made under the employer employee insurance scheme is akin to Keyman Insurance payments made when the conditions are not satisfied?"

4. TCA.No.539 of 2016 was admitted on 16.8.2016 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the loss on derivative transactions is trading loss thereby ignoring the fact that when no actual delivery has taken place, the transactions in question fall within the definition of speculative transaction as per Section 43(5) of the Income Tax Act ?
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the forex derivative transactions of the assessee have proximity to the export turnover thereby impliedly ruling that the issue is covered by Proviso (a) to Section 43(5), when the Proviso clearly mandates that to be categorized as hedge, the transactions should only be in respect of goods or merchandise manufactured or traded by the assessee ?
>
> iii. Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct by holding that the forex

derivative transactions carried on by the assessee through a banker as over the counter transactions (OTC) and not through a recognized stock exchange are also covered by Proviso (d) to Section 43(5) when the pre-conditions laid by the Explanation to the said Proviso are not satisfied to constitute it as an eligible transaction ?

iv. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in following the ratio in the case of CIT Vs. Concord Commercial (P) Ltd. [(2005) 95 ITD 117 (Mum.)(SB)] and CIT Vs. Baljit Securities [88 CCH 313 (Cal.)] when, admittedly, the factum of those cases relate to deemed speculation loss as per Explanation to Section 73(1), which is distinguishable from factum of the assessee's case which are governed by Section 43(5) read with Section 73 alone as the transactions per se are speculative as per mandate of Section 43(5)?

v. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law by deciding the issue solely based on the principles laid down in the relied upon cases rendered in the context of deeming provisions of Explanation to Section 73(1) alone? And

vi. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law by deciding that the transactions in structured derivative contracts are incidental to the assessee's business when the correlation to specific export bills and the correlation of maturity of the hedge and maturity of underlying transactions are not established?"

5. The learned Senior Standing Counsel for the appellant submits that the above appeals are 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 the respective cases is less than the threshold limit.

6. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law both raised and framed are left

open. In the event the tax effect in the respective cases 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 appeals to be heard and decided on merits. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

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

2.The Director, Central Board of Direct Taxes,
New Delhi.

3.The Commissioner of Income Tax(Appeals)II,
Coimbatore.

4.The Commissioner of Income Tax(Appeals)3,
Coimbatore.

5.The Assistant Commissioner of Income Tax,
Company Circle, Tirupur.

6.The Joint Commissioner of Income-Tax,
Tirupur Range, Tirupur.

7.The Assistant Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Chennai-90.

+1cc to Mr.T.R.Senthilkumar, Advocate SR.75715
+1cc to M/s.Subbaraya Aiyer Padmanabhan, Advocate SR.75931

TCA.Nos.537 to 539 of 2016 &
CMP.Nos.10641 & 10642/2016

SAI(CO)
CB(30/10/2019)