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.641 TO 643 OF 2016

The Principal Commissioner of
Income Tax, Central-1, Chennai-34
... Appellant/Appellant

Vs

M/s.Hatsun Agro Products Ltd.,
Chennai-17. ...Respondent/Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 20.11.2015 made in ITA.Nos.1433/ Mds/2012, 795/ Mds/2014 & 1096/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench respectively for the assessment years from 2008-09 to 2010-11.

Agaisnt the Order dated 10.11.2014 on the file of the Commissioner of Income Tax (Appeals)II, Chennai-600034 made in ITA.No.734/2013-14 for the Assessment Year 2010-11 and against the order dated 25.11.2013 on the file of the Commissioner of Income Tax (Appeals)-II, Chennai-600 034 made in ITA.No.412/2013-14 for the Assessment Year 2009-10 and against the Order dated 25.03.2013 on the file of the Deputy Commissioner of Income Tax, Company Circle - II(2), Chennai-34 made in PAN/GIR.NO.AAACH0945G for the Assessment Year 2010-11 and against the order dated 30.03.2012 on the file of the Commissioner of Income Tax (Appeals)XII, Chennai 600 034 made in ITA.No.129/2011-12 for the Assessment year 2008-09 and against the order dated 28.12.2011 on the file of the Assistant Commissioner of Income Tax, Company Circle 11(2) Chennai-34 made in PAN/GIR.NO.AAAC40945G for the Assessment year 2009-10 and against the order dated 30.12.2010 on the file of the Additional Commissioner of Income Tax, Company Range II, Chennai 600 034 made in PAN/GIR.No.AAAC40945G for the Assessment year 2008-09 (Tax case Nos.641 to 643/2016).

For Appellant : Mr.Karthi Ranganathan, SSC assisted by Mr.S.Rajesh, SC

For Respondent: Mr.A.S.Sriraman for Mr.S.Sridhar

COMMON JUDGMENT

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

We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Standing Counsel appearing for the appellant - Revenue and Mr.A.S.Sriraman, learned counsel accepting notice 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 20.11.2015 made in ITA.Nos.1433/Mds/2012, 795/ Mds/2014 & 1096/Mds/ 2015 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench respectively for the assessment years from 2008-09 to 2010-11.

3. The Revenue has filed these appeals by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case and in law, the Tribunal is correct to hold that disallowance for non deduction of tax arises only on amounts lying payable at the end of the year irrespective of the fact that the liability for deduction of tax arises at the time of credit or actual payment whichever is earlier ?
>
> ii. Whether, on the facts and in the circumstances of the case and in law, the definition given in Section 43(2) to the term 'paid', which means actually paid or incurred according to the method of accounting (payable in the case of mercantile system of accounting) based on which profits and gains are computed, is not applicable while invoking the provisions of Section 40(ia) ?
>
> iii.Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal is correct in remitting the issues to the file of the Assessing

Officer while giving direction to follow the judgment of the Special Bench of the Tribunal delivered in the case of Merilyn Shipping and Transports Vs. Addl. CIT [reported in (2012) 136 ITD 23], which is stayed by High Court of Andhra Pradesh? and

iv. Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal is correct in not deciding the grounds raised by the Department, on merits ?"

4. 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.

5. 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 raised 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

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

2. The Commissioner of Income Tax (Appeals)II,
Chennai-600 034.

3. The Deputy Commissioner of Income Tax,
Company Circle II(2), Chennai-34.

4. The Commissioner of Income Tax (Appeals)XII,
Chennai-600 034.

5. The Assistant Commissioner of Income Tax,
Company Circle II(2), Chennai-34.

6. The Additional Commissioner of Income Tax,
Company Range II, Chennai-34.

7. The Principal Commissioner of Income Tax,
Central-I, Chennai-34.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.76089

SR(CO)
CS/24/10/2019