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.75 & 76 of 2016

The Commissioner of Income Tax, Coimbatore ...Appellant in both Appeals

Vs

M/s.Magestic Exports, Tirupur.
PIN : 641602. ...Respondent in both Appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 24.7.2015 made in ITA.Nos.1336 and 3072/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench respectively for the assessment years 2009-10 and 2010-11 against the Order dated 26.02.2014 & 23.09.2014 made in ITA No.150/11-12 and 4/2013-04 passed by the Commissioner of Income Tax (Appeals)-II, Coimbatore and against the Order dated 31.12.2011 and 07.02.2013 passed by the Joint Commissioner of Income Tax , Tirupur Range, Tirupur and Assistant Commissioner of Income Tax, Circle -I, Tirupur for the Assessment Years 2009-10 & 2010-11 respectively.

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

For Respondent:Served and no appearance

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.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 24.7.2015 made in ITA.Nos.1336 and 3072/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench respectively for the assessment years 2009-10 and 2010-11.

3. The appeals were admitted on 03.2.2016 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 over viewing 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 preconditions laid by the Explanation to the said Proviso is not satisfied to constitute it as an eligible transaction ?

(iv) 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 73(1) which is applicable to company whereas the assessee in this case is a firm ? and

(v) 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 ?

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 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.

Rs

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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

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

3. The Joint Commissioner of
Income Tax , Tirupur Range,
Tirupur.

4.The Assistant Commissioner of
Income Tax, Circle -I,
Tirupur.

TCA.Nos.75 & 76 of 2016

Kak(05/11/2019)