IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

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

Tax Case Appeal Nos.637 and 638 of 2018

Principal Commissioner of Income Tax,
Central I,
No.108, Mahatma Gandhi Road,
Chennai. .. Appellant

-vs-

M/s.Chettinad Cement Corporation Ltd.,
Rani Seethai Hall, IV Floor,
603, Anna Salai, Chennai - 600 006.
PAN: AAACC3130A .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order dated 28.12.2017 on the file of the Income-tax Appellate Tribunal 'A' Bench, Chennai, in I.T.A.No.1201/MDS/2017 for the assessment year 2007-08, against the order of Both the appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax(appeals)-17 Chennai dated 20.02.17 and pertain to assessment year 2007-2008 and 2012-13 against order of the Commissioner of Income Tax (Appeals)-17, Chennai 600 034 dated 19/08/2016, 30/01/15, 27/02/2013 PAN/GIR.NO. AAACC3130A.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel
: M/s.K.G.Usharani

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

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

This appeal, filed by the appellant/revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 28.12.2017 passed by the Income-tax Appellate Tribunal 'A' Bench, Chennai, in I.T.A.No.1201/MDS/2017 for the assessment year 2007-08.

2.The appeals were filed by raising the following substantial questions of law:-

> "1.Whether the surcharge and education cess paid by an assessee while paying minimum alternate tax under section 115JB of Income Tax Act, are to be included while allowing credit of minimum alternate tax under section 115JAA of Income Tax Act?
>
> 2.Whether the ITAT is correct in law in placing reliance on the Judgment of the Supreme Court in the case of CIT vs. K.Srinivasan (1971) reported in 83 ITR 346, for giving relief to the assessee, whereas the said interpretation to "tax" is applicable only for the assessment year 1964-65 and not for subsequent assessment years?
>
> 3.Whether the ITAT is correct in importing the definition of "tax" as interpreted by the Hon'ble Supreme Court in the case of CIT vs. K.Srinivasan (1971) reported in 83 ITR 346, whereas the Section 115JA did not defined "tax" to include surcharge and educational cess, as defined in Section 115JB of the Act?"

3.The above Substantial Questions of law framed for considered was considered by us in the case of Principal Commissioner of Income Tax vs. M/s.Scope International Pvt. Ltd. in TCA.No.369 of 2019 dated 19.06.2019 and the questions were answered against the revenue. The operative portion of the judgment reads as follows:

> "10.The Revenue is before us contending that surcharge and cess should not be included and that the decision in the case of K.Srinivasan would not be applicable to the facts of this case. Thus, the argument advanced before us is that both the CIT(A) as well as the Tribunal ought not to have followed the decision in the case of K.Srinivasan, which was rendered in the context of Section 2 of the Act whereas Section 11JAA of the Act was inserted subsequently with retrospective effect from 01.04.1997."

4.Following the above said decision, the tax case appeal is dismissed and the substantial questions of law are answered against the revenue. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax(Appeals)-17,
Nungambakkam, Chennai-34.

3.The Deputy Commissioner of Income Tax,
Large Tax payer Unit -II, Chennai-101.

+1cc to Mr.T.R.Senthilkumar, Advocate SR.NO. 74199
+1cc to Mr.S.Sridhar, Advocate SR.NO. 74500

T.C.A.Nos.637 and 638 of 2018

nr 01/10/2019