IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

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

Tax Case Appeal Nos.148, 149, 151 and 152 of 2017

T.C.A.Nos.148 and 151 of 2017:-

Commissioner of Income Tax,
Chennai. .. Appellant/Appellant in both Appeals

-vs-

M/s.Spencer & Co. Ltd.,
769, Anna Salai, Chennai-600 002.
PAN - AAACS4451J .. Respondent/Respondent in both Appeals

Appeals under Section 260A of the Income-tax Act, 1961, against the common order dated 17.04.2015, on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai in I.T.A.No.124/Mds/2011 and I.T.A.No.2057/Mds/2012 for the assessment years 2007-08 and 2009-10 respectively.

ITA Nos.124/mds/2011 and 2057/mds/2012 against the commissioner of Income Tax (Appeals)V Chennai-34, in ITA No.259/09-10, order dt 3/11/2010 in PAN/GIR No.AAACB4451J for the Assessment year 2007-08 against the Assistant Commissioner of Income Tax Company Circle VI(4) Chennai-34, in PAN/GIR No.AAACS4451J/SP-14 for the Assessment year 2007-08 order dt.17/12/2009.

T.C.A.Nos.149 and 152 of 2017:-
Commissioner of Income Tax,
Chennai. .. Appellant/Appellant in both Appeals

-vs-

M/s.Spencer International Hotels Ltd.,
769, Anna Salai, Spencer Plaza, 4th Floor,
Chennai-600 002.
PAN - AAACS5058F .. Respondent/Respondent in both Appeals

Appeals under Section 260A of the Income-tax Act, 1961, against the common order dated 17.04.2015, on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai in I.T.A.No.1288/Mds/2011 and I.T.A.No.2058/Mds/2012 for the assessment years 2008-09 and 2009-10 respectively.

ITA Nos.1288/mds/2011 and ITA No.2058/mds/2012 against the Commissioner of Income Tax (Appeals)V, Chennai-34, CIT(A)V/ITA No.237/2011-12 order dt.31/8/2012 in PAN AAACS4451J for the Assessment year 2009-10 against the Assistant Commissioner of Income Tax, Company Circle VI(4) Chennai-34, in PAN/GIR No.AAACS4451J. Ward/Circle/Range/-Company circle VI(4), Chennai for the Assessment year 2008-2009 order dt.29/12/2010.

For Appellant : Mr.T.R.Senthil Kumar,
(In all Appeals) Senior Standing Counsel

: assisted by Ms.K.G.Usharani,
Junior Standing Counsel

For Respondent : Mr.R.Sivaraman,
(In all Appeals)

******

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals by the appellant/Revenue filed under Section 260A of the Income-tax Act, 1961, are directed against the common order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, in I.T.A.No.124/Mds/2011, I.T.A.No.1288/Mds/2011, I.T.A.No.2057/Mds/ 2012 and I.T.A.No.2058/Mds/2012 for the assessment years 2007-08, 2008-09, 2009-10 and 2009-10.

2.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned Junior Standing Counsel for the appellant/Revenue; and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

3.The above appeals have been filed raising the following substantial questions of law:-

"T.C.A.Nos.148 and 151 of 2017:-

AY 2007-08, 2008-09

Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is entitled for the claim of depreciation on the alleged expenditure incurred in building the brand (Spencer) when the assessee

had not incurred any cost towards acquiring the brand and when the assessee had not substantiated the basis of the valuation/expenditure incurred for the purpose of the said brand.
AY 2007-08, 2008-09, 2009-10
Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is entitled for deduction of the expenditure incurred toward the license fee paid to RPG Enterprises Ltd.
AY 2007-08
(a) Whether on the facts and in the circumstances of the case the tribunal was right in holding that Rule 8D is prospective in nature and is not applicable to the Asst. Year 2007-08.
(b) Whether on the facts and in the circumstances of the case the tribunal was right in holding that the assessee had not incurred any expenditure towards earning the exempt dividend income and consequently no disallowance can be made u/s 14A.
T.C.A.Nos.149 & 152 of 2017:-
(a) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is entitled for deduction of the expenditure incurred toward the license fee paid to RPG Enterprises Ltd.
(b) Whether on the facts and in the circumstances of the case the tribunal was right in holding that the assessee had not incurred any expenditure towards earning the exempt dividend income and consequently no disallowance can be made u/s 14A.
(c) Whether on the facts and in the circumstances of the case the tribunal was right in following the decisions of this Hon'ble Court in TC 123/2009 dated 9.7.2013 applicable to the assessment year 2004-05 and 2005-06 for the present case with assessment year 2008-09 and 2009-10 where the provisions of Rr 8D had to be applied for arriving at the expenditure incurred for earning the exempt income and the said expenditure is to be disallowed."

4.It is submitted by the learned counsel for the respondent/assessee that the cases are low tax effect cases and has given a computation.

5.Copy of the computation has been handed over to the learned Senior Standing Counsel for the appellant/Revenue, who is not in a position to readily verify. However, placing on record the submission of the learned counsel appearing for the respondent/assessee, all these appeals are closed on the ground of low tax effect leaving the substantial questions of law open.

6.In the event, the Revenue is of the opinion that the tax effect is above the threshold limit or to fall under the exceptional clauses mentioned in Circular No.17/2019 dated 08.08.2019, it is well open to the Revenue to mention before this Court for restoration the appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

(abr)

To

1.The Assistant Commissioner of Income Tax,
Company Circle VI (4), Chennai-600 034.

2.The Commissioner of Income Tax (Appeals)-V,
121, Mahatma Gandhi Road, Chennai-600 034.

3.The Income Tax Appellate Tribunal 'C' Bench, Chennai.

+2cc to Mr.T.R.Senthil Kumar, Advocate SR.75703, 75705

T.C.A.Nos.148, 149, 151 and 152 of 2017

RJI(CO)
CB(05/11/2019)