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.291 and 292 of 2017
and
C.M.P.No.8566 of 2017

Principal Commissioner of Income Tax 2,
No.121, Mahatma Gandhi Road,
Chennai-600 034. .. Appellant in both Appeals

-vs-

M/s.Harita Seating Systems Ltd.,
Jayalakshmi Estates,
29, (Old No.8), Haddows Road,
Chennai-600 006.
PAN: AAA CH 2492 N .. Respondent in both Appeals

Appeals under Section 260A of the Income-tax Act, 1961, against the common order dated 29.07.2016, made in I.T.A.Nos.2857 & 2970/Mds/2014 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2010-11, against the order dated 31.07.2014 made in ITA.NO.1642/2013-2014 by the Commissioner of Income Tax (Appeals)-II, Chennai against the Assessment order dated 01.03.2013 passed by the Deputy Commissioner of Income Tax, Company Circle II(2), Chennai in PAN/GIR.NO. AAACH2492N.

For Appellant : Mr.Karthik Ranganathan,
(In both Appeals) Senior Standing Counsel
assisted by Mr.S.Rajesh,

For Respondent : Mr.R.Venkatanarayana
(In both Appeals) For M/s.Subbaraya Aiyar, Padmanabhan

COMMON JUDGMENT

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

These appeals filed by the Revenue under Section 260A of the Income-tax Act, 1961 are directed against the common order dated 29.07.2016, made in I.T.A.Nos.2857 & 2970/Mds/2014 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2010-11.

2.The appeals have been admitted on 21.08.2017, on the following substantial questions of law:-

"(i) Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in holding that capital gains on transfer of Bangalore and Pune units is long term capital gains when such assets are not long term capital assets in view of Section 2(29A) read with Section 2(42A) of the Income Tax Act, 1961 since not held for more than 36 months and whether such order of ITAT contrary to the express provisions contained in the proviso to Section 50B(1) of the Income Tax Act, 1961 makes the order legally untenable?

(ii) Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in deleting the disallowance under Section 14A of the Income Tax Act, 1961 holding that free funds in the form of reserves and surplus held by the assessee is more than the investment made in assets yielding exempt income, when the assessee was maintaining mixed bag of funds and failed to substantiate that such investment in assets yielding exempt income are out of interest free funds?

(iii) Whether on the facts and circumstances of the case and in law, Tribunal erred in not following the ratio laid down by the Apex Court in Orient Trading Co. Ltd. vs. CIT (224 ITR 371) so as to arrive at the market value of part consideration received in kind i.e., shares of HFL and whether as a result of such non appreciation of binding order of the Apex Court made the impugned order perverse both on facts and in law? and

(iv) Whether on the facts and circumstances of the case and in law, Tribunal was correct and justified in deleting the addition on account of disallowance under Section 14A of the Income Tax Act, 1961 made to book profits computed under Section 115JB of the Income Tax Act, 1961 being expenditure incurred to earn exempt income even though Clause (f) of Expl. 1 to Section 115JB of the Income Tax Act, 1961 specifically provides for it?”

3.Heard Mr.Karthik Ranganathan, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Standing Counsel for the appellant - and Mr.R.Venkatanarayana, learned counsel, for M/s.Subbaraya Aiyar, Padmanabhan & Ramamani, for the respondent.

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 08.08.2019 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 this case 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 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, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(abr)

To

1.The Principal Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Chennai-34.

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

3.The Commissioner of Income Tax(Appeals II)
Chennai.

4.The Deputy Commissioner of Income Tax,
Company Circle II(2),
Chennai.

+1cc to M/s.Subbaraya Aiyar, Advocate sr.75141

T.C.A.Nos.291 and 292 of 2017

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