IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.1209 of 2009

M/s.Wheels India Limited,
Padi,
Chennai - 600 050. ...Appellant/Appellant

Vs.

The Asst. Commissioner of Income Tax,
Company Circle - III (3),
Chennai - 600 034. ...Respondent/Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, Chennai dated 30th January 2009 in ITA.No.438/Mds/2008 for the Assessment year 2004-2005 against the order of the Commissioner of Income Tax Appeals III, Chennai dated 20.12.2007 made in I.T.A. No. 748/2006-2006 Y/A-III for the Assessment year 2004-2005 against the order of the Joint Commissioner of Income Tax Company Range III, Chennai 34 dated 20.12.2006 made in GJR No.PAN AAACW0315K(33001-W) for the Assessment year 2004-2005.

For Appellant : Mr.Venkat Narayanan
For Subbaraya Aiyar Padmanabhan

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

JUDGMENT
(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This Tax Case Appeal has been filed by the Assessee against the order of the learned Tribunal dated 30th January 2009 for Assessment year 2004-05. The present appeal has been admitted by the Coordinate Bench of this Court only on the following limited question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that 90% of gain on derivative products and gain on interest rate swap on derivative instruments should be excluded from the profits of the business for the purpose of computation of deduction u/s.80HHC of the Act?"

2.Para 5.2 of the impugned order of the learned Tribunal is quoted below for ready reference:

"5.2 After hearing both the parties and considering the relevant record, we note that the first three items i.e. sub-contract charges receipts; gain on derivative products and gain on interest swap on derivative instruments are covered against the assessee by the decision of the Hon'ble Supreme Court in the case of CIT vs. K.Ravindranathan Nair (295 ITR 228). Accordingly we uphold the order of the Commissioner (A) qua these three items. As far as the issue regards DEPB income is concerned, we note that this issue is pending adjudication before the Special Bench of this Tribunal. Accordingly we set aside the order of the lower authorities and remit the same to the record of the Assessing Officer to pass a fresh order as per the outcome of the Special Bench decision or the latest judgment of High Courts/Supreme Court. Needless to say the assessee be given an opportunity of hearing before passing such order."

3.The learned counsel for the Appellant/Assessee Mr.Venkat Narayanan submitted that the Assessee did not earn any income on the gain on derivative products and gain on interest swap on derivative instruments, as discussed by the learned Tribunal in the aforesaid para 5.2, but on account of changing one type of loan taken by the Assessee from foreign currency fixed interest loan to foreign currency floating interest rate, the Assessee's interest liability had gone down approximately by Rs.38 lakhs in the impugned assessment year in question and therefore, the provisions of Clause (baa) and Explanation to Section 80 HHC of the Income Tax Act, 1961 could not be applied to the said interest component by the learned Tribunal by misapplying the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Ravindranthan Nair [92007) 295 ITR 228]. The Hon'ble Supreme Court, in the aforesaid Judgment, in para 23 has held as under:

"23. Before concluding we state that the nature of every receipt needs to be ascertained in order to find out whether the said receipt forms part of/or that it has an attribute of an export turnover. When an indirect tax is collected by the taxpayer on behalf of the government the tax recovered is for the government. It may be an income in the conceptual sense or even under the I.T. Act but while working out the formula under Section 80HHC(3) of the I.T. Act and while applying the four variables one has to ascertain whether the receipt has an attribute of export turnover. An indirect tax like excise duty does not have that element of export turnover as understood in the above formula. As stated above, it is recovered by the taxpayer on behalf of the government. Therefore, in the present cases, our judgment in Commissioner of Income Tax, Coimbatore v. M/s. Lakshmi Machine Works (supra), has no application."

4.The learned counsel for the Respondent/Revenue supported the impugned order of the learned Tribunal.

5.Having heard the learned counsel for the parties, we are of the opinion that the contention sought to be raised by the Assessee before this Court now does not appear to have been raised before the learned Tribunal in the manner it has been raised before this Court and the facts and details of the reduction of interest liability on account of change of contract with the lending financial institutions from "Foreign currency Fixed Interest Loan" to "Foreign currency Floating Interest rate" has not been discussed by the learned Tribunal in the impugned order.

6.The Tribunal, being the final fact finding body, has to be recorded its independent findings facts and then only apply the law applicable to such facts. We do not find any such discussion on this aspect of the matter by the learned Tribunal.

7.Therefore, we are inclined to remand the matter back to the learned Tribunal without answering the aforesaid question of law, as quoted above.

8.Accordingly, we dispose of the present Appeal and we remit back the matter to the learned Tribunal for deciding the appeal on the said aspect of the matter again, after hearing the contentions of both the parties in accordance with law. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

Sgl

To

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

2.The Commissioner of Income Tax Appeals III
Chennai

3.The Joint Commissioner of Income Tax
Company Range III, Chennai 34.

4.The Assistant Commissioner of Income Tax
Company Circle III(3) Chennai 34.

+1 CC to Mr. Subbaraya Aiyar Padmanabhan, Advocate sr 6044
+1 CC to Mr.T. Ravikumar, Advocate sr 5022.

T.C.A.No.1209 of 2009

VBA(CO)
SP(25/02/2020)