In the High Court of Judicature at Madras

Dated : 06.7.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.301 of 2019

The Commissioner of Income Tax, Chennai ...Appellant

Vs

M/s.Comstar Automotive Technologies Pvt. Ltd., Chengalpattu-600204. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 25.10.2018 made in ITA.No.209/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2003-04,

against the order dated 29/09/2017 made in ITA No.330/CIT(A)-11/2013-14 on the file of the Commissioner of Income Tax (Appeals)-9, Chennai for the Assessment Year 2003-2004 and

against the order dated 30/12/2008 made in GIR No/PAN.555-V/AAACM 2284P on the file of the Deputy Commissioner of Income Tax Company Circle-III(4), Chennai for the Assessment Year 2003-04.

For Appellant : Mr.T.Ravikumar, SSC &
Mrs.R.Hemalatha, SSC

For Respondent: Mr.R.Sivaraman

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.Ravikumar and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue and Mr.R. Sivaraman, learned counsel appearing for the respondent.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 25.10.2018 made in ITA.No.209/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Tribunal) for the assessment year 2003-04.

3. The appeal has been admitted on 08.7.2019 on the following substantial questions of law :

> "i. Whether the set off of brought forward unabsorbed depreciation of the Assessment year 2001-02 and 2002-03 are to be first set off before considering deduction under Section 10B for the assessment year 2003-04?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the deduction under Section 10B is to be allowed without considering the depreciation loss, when it was held by the Apex Court in the case of Yokogawa India Ltd that the deduction under Section 10B is to be allowed while computing the gross total income of the eligible undertaking under Chapter -IV of the Income Tax Act? And
>
> 3. Whether the Tribunal ought to have applied the decision of the Apex Court in the case of Himatsingke Seide reported in 48 Taxmann.com page 357 SC which had held that the unabsorbed depreciation loss of Section 10B unit cannot be set off against other incomes, which was neither overruled nor discussed in Yokogawa India Ltd reported in 77 Taxmann.com page 41?"

4. It is submitted by the learned counsel on either side that the issue involved in this appeal is covered by the decision in the assessee's own case in TCA.No.228 of 2011 dated 18.3.2020, by which, the assessee's appeal was allowed and the substantial questions of law were answered in favour of the assessee.

5. Following the said decision, the above tax case appeal filed by the Revenue is dismissed and the substantial questions of law are answered in favour of the assessee and against the Revenue. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax (Appeal)-9,
Chennai.

3.The Deputy Commissioner of Income Tax Company Circle-III(4),
Chennai.

TCA.No.301 of 2019

rsv[co]
srg 25/08/2020