IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.Nos.144 & 145 of 2018

Commissioner of Income Tax
Company Circle-3
Chennai .. Appellant in both cases/Respondent

Versus

M/s.Thiru Arooran Sugar Limited
Eldarado V Floor
112, Mahatma Gandhi road,
Chennai 600 034
PAN AAACT2382B ..Respondent in both cases/Appellant

Common Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''C'' Bench, in I.T.A.Nos.458&459/MDS/2015 dated 14.07.2017 for the assessment year 2008-09 & 2010-11.

Against the order of the Commissioner of Income Tax (Appeals-III) Chennai-34, dt.31.10.14 and made in ITA.No.1902/13-14-(ITA-III) & ITA.No.1104/13-14 / CIT(A)-III and against the order of the Assistant Commissioner of Income Tax, Company Circle III (2), Chennai-34 dt.30.12.2010 & 28.3.2013 and made in AAACT2382B for the assessment year 2008-09 & 2010-11.

For Appellant in both appeal :Mr.M.Swaminathan
Senior Standing Counsel
For Respondent in both appeal :Mr.Vijayaraghavan

COMMON JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeal, filed by the assessee, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) are directed against the order dated 14.07.2017 passed by the Income Tax Appellate Tribunal, Bench 'C' Chennai in ITA.Nos.458&459/MDS/2015 for the assessment year 2008-09 and 2010-11. These appeals were admitted on 03.04.2018 on the following substantial question of law:

''Whether the Tribunal is right in directing the Assessing Officer to exclude the interest on term loan and cash credit accounts for calculation of disallowance u/s 14A read with Rule 8D though the assessee has made investment out of mixed bag of funds and there is no express provision in section 14A and Rule 8D for such exclusion?''

2. We have elaborately heard Mr.N.Swaminathan, learned Senior Standing Counsel for the appellant / Revenue and Mr.Vijayaraghavan, learned counsel representing Insolvency Resolution Professional ('IRP' for brevity). Mr.R.Raghavender, IRP is the respondent/assessee is under the process of liquidation. In the assessee's own case, this Court has considered the above question of law in T.C.A.No.289 of 2018, wherein the second substantial question of law is identical to the question of law framed for consideration in these appeals. The Tax Case Appeal was allowed by judgment dated 04.08.2020 and the matter was remanded to the Assessing Officer for fresh consideration and the relevant portion of the judgment reads as follows:

> ''7. The learned Standing Counsel appearing for the Revenue would rely upon the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi [reported in (2018) 91 Taxmann.com 154] wherein the Court held that only expenses proportionate to earning exempt income could be disallowed under Section 14A of the Act and that Rule 8D of the Income Tax Rules, 1962 is prospective in nature and could not have been made applicable in respect of assessment years prior to 2007 when this Rule was inserted.
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> 8. Reliance is also placed on the decision rendered by us in the case of CIT Vs. M/s.Tamil Nadu Industrial Development Corporation Ltd. [TCA.Nos.509 and 510 of 2018 dated 07.7.2020] and the decision of the Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of Roca Bathroom Products Private Ltd. Vs. PCIT [reported in (2019) 101 Taxmann.com 395] wherein it has been held that where the Assessing Officer made observations under Section 14A of the Act in respect of a dividend income earned by assessee from mutual fund investments, in view of plea raised by assessee that it had utilised only non-interest bearing funds in making investment in mutual funds and interest incurred by assessee was specifically towards acquisition of shares in 'G' Ltd. which company subsequently stood amalgamated with assessee, the

impugned disallowance was to be deleted and the matter was to be remanded back to Assessing Officer for disposal afresh.

9. The above decisions were pressed into service by the learned Standing Counsel for the assessee to state that if the Tribunal had chosen to remand the matter, it should have made an open remand and should not have qualified the remand, which, in fact, was the decision taken in the case of Beach Miners Co. Pvt. Ltd. Vs. ACIT [ITA.No.2110/Mds/2014 dated 06.8.2015].

10. Per contra, Mr.R.Vijayaraghavan, learned counsel appearing for the respondent - assessee has relied upon

> "(i) the decision of the Delhi High Court in the case of Joint Investments Ltd. Vs. CIT [reported in (2015) 372 ITR 0694];
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> (ii) another decision of the Delhi High Court in the case of PCIT Vs. Moderate Leasing and Capital Services Pvt. Ltd. [reported in 2018-TIOL-2459-HC-Del-IT]; and
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> (iii) the order of the Hon'ble Supreme Court in the case of PCIT-6 Vs. Moderate Leasing and Capital Services Pvt. Ltd. [reported in 2018-TIOL-431-SC-IT] wherein the appeal filed by the Revenue against M/s.Moderate Leasing and Capital Services Private Limited was dismissed."

11. The learned counsel appearing for the respondent - assessee has also placed reliance on

> (i) the decision of the Delhi High Court in the case of M/s.ACB India Limited Vs. ACIT [reported in (2015) 374 ITR 108];
>
> (ii) the decision of the Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd. [reported in (2009) 313 ITR 340]; and
>
> (iii) the judgment of this Court, to which, one of us (TSSJ) was a party, in the case of CIT Vs. Tidel Park Ltd. [TCA.Nos.732 and 733 of 2018 dated

07.7.2020].

> 12. We have perused the impugned order passed by the Tribunal and more particularly paragraph 11, which we have extracted above. The Tribunal, having chosen to remand the matter to the Assessing Officer for a fresh consideration, could have avoided qualifying the remand especially when the questions of law are being raised by both the Revenue as well as the assessee. Therefore, we are inclined to interfere with that portion of the order passed by the Tribunal and remand the matter for a fresh consideration to the Assessing Officer to enable him/her to consider the entire matter afresh without, in any manner, curtailing exercise of his/her power as an Assessing Officer. Further, we find that the Tribunal did not give independent reasons as to why, in its opinion, the direction issued in the case of Beach Miners Co. Pvt. Ltd., should also apply to the case of the assessee.
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> 13. In the light of the above discussions, the tax case appeal is allowed, the findings/observations made by the Tribunal in paragraph 11 of the impugned order are set aside and the order of remand is confirmed. We make it clear that the remand is an open remand and a direction is issued to the Assessing Officer to consider all issues that may be raised before him both by the Revenue as well as the assessee either factual or legal or both and take an informed decision in the matter after affording an opportunity of hearing to the IRP representing the assessee. We request the said Mr.R.Raghavendar, IRP to appear before the Assessing Officer and put forth all his submissions bearing in mind the interest of the shareholders. The substantial questions of law framed are left open. No costs.

3. It is pointed out by Mr.R.Vijayaraghavan, learned counsel that there is a slight difference in the instant appeal as the Tribunal has not qualified the order of remand as in the order impugned in T.C.A.No.289/2018. This statement is taken on record.

4. In the light of the above, the Tax Case Appeal is allowed and the finding / observation made by the Tribunal are set aside and the matter is remanded to the Assessing Officer to consider

all issues that may be raised before him both by the assessee as well as the Revenue and after affording an opportunity of hearing to the IRP or a counsel to be engaged by him, the Assessing Officer shall take a decision on merits and in accordance with law. Consequently, the Substantial Question of Law arises is left open. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1. The Joint Commissioner of Incometax
Special Range-I
Chennai 600 034.

2.The Commissioner of Income Tax
Appeals-III, Nungambakkam, Chennai.

3.The Assistant Commissioner of Income Tax,
Company Circle-3(2)
Chennai.

+1 cc to M/s.Subbaraya Aiyar, advocate,sr.28539.

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