IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

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

T.C.A.No.189 of 2018

M/s.Carborundum Universal Ltd
Parry House
No.43, Moore Street,
Chennai - 600 001
PAN:AAACC2474P .. Appellant/Respondent

Versus

The Assistant Commissioner of Incometax,
Large Tax Payer Unit-1
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101 .. Respondent/Appellant

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 19.05.2016 made in I.T.A.No.1742/Mds/2014 relating to the Assessment Year 2004-05.

Appeal against the Order dated 20/03/2014 on the file of the Commissioner of Income Tax (Appeal) Large Tax Payer Unit, Chennai made in ITA No. 57/09-10 LTU (A)/ PAN No.AAACC2474P, Assessment Year 2004-05.

Appeal against the Order dated 17/12/2009 on the file of the Additional commissioner of Income Tax LTU, Chennai, above said and PAN No. AAACC2474P for the Assessment Year 2004-05.

For Appellant : Mr.Venkatanarayanan
For M/s.Subbaraya Aiyar Padmanaban

For Respondent : Mr.T.Ravikumar
Senior Standing counsel

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

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 19.05.2016 passed by the Income Tax Appellate Tribunal, Madras, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.1736/Mds/2014 for the Assessment Year 2004-05. The appeal has been filed, raising the following Substantial Questions of Law:

> "1. Whether, on the facts and in the circumstances of the case, The Tribunal was right in law in holding that the assessee was not eligible to claim the provision for a loss which it had incurred during the course of business and which is allowable under Section 28(i) read with Section 29?
>
> 2. Whether, on the facts and in the circumstances of the case, The Tribunal was right in law in holding that explanation to Sec.37(1) of the IT Act has application to the facts of the assessee's case.
>
> 3. Whether, on the facts and in the circumstances of the case, The Tribunal was right in law in holding that the Assessee was not eligible to claim the provision for leave encashment which has been determined scientifically and accurately based on actuarial valuation, and the incurring of expenditure is certain and has arisen in the previous year ended in 31st March 2004.
>
> 4. Whether, on the facts and in the circumstances of the case, The Tribunal was right in law in not following the decision in Exide Industries Ltd and another Vs. Union of India & Others 292 ITR 470."

2. We have heard Mr.Venkatanarayanan, learned counsel for the appellant/assessee and Mr.T.Ravikumar, learned Senior Standing counsel for the respondent/Revenue.

3. It is not disputed by the learned counsel appearing for the assessee that the above mentioned Substantial Questions of Law have been answered against the assessee by the Hon'ble Supreme Court of India in the case of Union of India and others Vs. Exide Industries Ltd and another, [(2020) 107 CCH 0427 ISCC], wherein the Hon'ble Supreme Court of India held as follows:

> "19. The leave encashment scheme envisages the payment of a certain amount to the employees in lieu of their unused paid leaves in a year. The nature of this payment is beneficial and pro- employee. However, it is not in the form of a bounty and forms a part of the conditions of service of the employee. An employer seeking deduction from tax liability in advance, in the

name of discharging the liability of leave encashment, without actually extending such payment to the employee as and when the time for payment arises may lead to abhorrent consequences. When time for such payment arises upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Consequently, the innocent employee will be entangled in litigation in the evening of his/her life for claiming a hard-earned right without any fault on his part. Concomitantly, it would entail in double benefit to the employer - advance deduction from tax liability without any burden of actual payment and refusal to pay as and when occasion arises. It is this mischief clause (f) seeks to subjugate."

4. Further, the Hon'ble Supreme Court of India, on identical issue, dismissed the Special Leave Petition (SLP) in the case of Dhanalakshmi Bank Ltd. Vs. Commissioner of Income-tax, [2019] 109 taxmann.com 89 (SC), approving the decision of the High Court, ruling that disallowance of provision for leave Encashment under Section 43B(f) is allowed only on actual payment.

5. The High Court of Kerala in the case of South Indian Bank Ltd Vs. Commissioner of Income-tax, [2014] 49 taxmann.com 100 (Kerala), also held that deduction for leave encashment is allowable only on actual payment.

6. In the light of the above decision, the Substantial Questions of Law framed for consideration has to be necessarily answered against the appellant / assessee. In the result, the Tax Case Appeal is dismissed and the Substantial Questions of Law are answered against the assessee. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kak

To

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

2.The Commissioner of Income Tax (Appeals),
Large Tax Payer Units, Chennai.

3.The Additional Commissioner of Income Tax LTU,
Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 33994
+1cc to Mr.T.Ravikumar, Advocate, S.R.No. 34005



PP(CO)
GN(22/12/2020)