IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

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

Tax Case Appeal No.264 of 2018 & CMP.No.4802 of 2018

The Principal Commissioner of
Income Tax, Central 2, Chennai. ...Appellant

Vs

M/s.SNJ Distillers Pvt. Ltd.,
Chennai-35 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 31.5.2017 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.1044/Mds/2016 for the assessment year 2013-14 against the order dated 07/01/16 and made in ITA.No.301/15-16 on the file of the Commissioner of Income Tax Appeals, Chennai and against the order dated 30/03/15 and made in PAN. AALCS9312F on the file of the Income Tax Department, Central Circle 2 (1), Chennai - 34.

For Appellant : T.R.Senthilkumar, SSC assisted by
Mrs.K.G.Usharani, JSC
For Respondent : Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyer Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 31.5.2017 made in I.T.A.No.1044/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2013-14.

2. The Revenue filed this appeal by raising the following substantial questions of law:

"i. Whether the Tribunal is correct in law in dismissing the appeal of the Revenue on the ground that the disallowance made under Section 14A read with Rule 8D is not attracted when there is no exempt income, when the fact remains that the CBDT, vide circular No.5 of 2014 dated 11.2.2014, in exercise of its power under Section 119 of the Act, has clarified that Rule 8D read with Section 14A of the Act provides for disallowance of such expenditure even before a tax payer has not earned any exempt income?

ii. Whether the Appellate Tribunal is correct in law in dismissing the appeal of the Revenue on the ground that the investment made by the assessee in group subsidiary company is on account of commercial expediency and expenditure attributable to such investment does not attract the provisions of Section 14A of the IT Act read with Rule 8D wheras Rule 8D as contained in the Income Tax Rules, 1962 does not provide for any such exclusion for the purpose of computing disallowance under Section 14A of the Income Tax Act, 1961? and

iii. Whether the Appellate Tribunal is correct in law in dismissing the appeal of the Revenue on the bogus purchase of gift items on the ground that the same was made by the Assessing Officer without independent verification without giving credence to the findings of the Commercial Tax Department, which is another Government Tax Enforcement Authority, based on which, the said addition was made by the Assessing Officer ?"

3. We have elaborately heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant - Revenue and Mr.R. Vijayaraghavan, learned counsel appearing for the respondent - assessee.

4. With regard to substantial question of law Nos.1 and 2, the Revenue has contended that the Tribunal erred in dismissing the appeal filed by the Revenue on the ground that the disallowance made under Section 14A of the Act read with Rule 8D

of the Income Tax Rules, 1962 was not attracted when there is no exempt income.

5. This issue is no longer res integra and has been decided in favour of the assessee in the decision of the Division Bench of this Court in case of CIT Vs. Chettinad Logistics Pvt. Ltd. [reported in (2017) 248 Taxmann 0055] wherein the relevant portions read thus:

> "9. In our opinion Section 14A of the Act, can only be triggered, if, the assessee seeks to square off expenditure against income which does not form part of the total income under the Act.
>
> 9.1. The legislature, in order to do away with the pernicious practice adopted by the Assessees', to claim expenditure, against income exempt from tax, introduced the said provision.
>
> 10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.
>
> 10.1. Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.
>
> ......
> 15. However, it is, our view, as indicated above, independent of the reasoning given in M/s.Redington (India) Limited case that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.
>
> 15.1. Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue."

6. Thus, by applying the law laid down in the said decision, substantial question of law Nos.1 and 2 are answered against the Revenue. With regard to substantial question of law

No.3, on perusal of the impugned order passed by the Tribunal, we find that the entire matter is factual and no question of law much less substantial question of law arises for consideration.

7. Accordingly, the above tax case appeal is dismissed. Substantial question of law Nos.1 and 2 are answered against the Revenue. We hold that no substantial question of law arises for consideration as raised by the Revenue in so far as the third substantial question of law is concerned. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Principal Commissioner of
Income Tax, Central 2, Chennai.

3.The Commissioner of Income Tax Appeals,
Chennai.

4.The Income Tax Department,
Central Circle 2(II),
Chennai - 34.

+1cc to M/s.Subbaraya Aiyar Padmanathan, Advocate, SR.NO.41057
+1cc to Mr.T.R. Senthil Kumar, Advocate, SR.NO.41056

TCA.No.264 of 2018&
CMP.No.4802 of 2018

VD(CO)
KKV/31/12/2020