IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

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

TAX CASE APPEAL NOS.1030 & 1031 OF 2019

The Commissioner of Income Tax,
Chennai. ...Appellant in both Appeals

Vs

M/s.Tamilnadu Martime Board,
Chennai-28. ...Respondent in both Appeals

Prayer:- Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 13.6.2019 made respectively in ITA.Nos.345 and 344/Chny/2019 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai respectively for the assessment years 2015-16 and 2014-15.

Against the Order dated 22.11.2018 and 30.11.2018 made in ITA.No.80/2017-18 and ITA.No.233 of 2006-2017 passed by the Commissioner of Income Tax (Appeals)-2, Chennai and against the order dated 29.12.2017 and 30.12.2016 passed by the Assistant Commissioner of Income Tax, Non Corporate Circle 2, Chennai and Deputy Commissioner of Income Tax, Non Corporate Circle-2, Chennai for the Assessment year 2015-16 and 2014-15 respectively.

For Appellant in both Appeals : Mrs.R.Hemalatha, SSC

For Respondent in both Appeals : Ms.S.Sriranjani for Mr.G.Baskar

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have elaborately heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant and Ms.S.Sriranjani, learned counsel appearing on behalf of Mr.G.Baskar, learned counsel accepting notice for the respondent.

2. These appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) challenging the common order dated 13.6.2019 made respectively in ITA.Nos.345 and 344/Chny/ 2019 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench (for brevity, the Tribunal) respectively for the assessment years 2015-16 and 2014-15.

3. The above appeals were admitted on 14.9.2020 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in granting relief to the assessee by treating the receipt in question viz. grants received from the Government of Tamil Nadu as interest free loans and allowing depreciation claimed against the assets acquired from the said receipts despite the fact that the Tamil Nadu Government GO dated 18.7.2005 had classified the same as grants only?
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> ii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in decreasing the cost retrospectively based on GO 22 dated 03.2.2016 especially when Section 43(1) read with Section 43(6) of the Income Tax Act envisages the computation of actual cost of each assets for every assessment year not only in respect of assets acquired during the previous year but also in respect of assets acquired before the previous years based on factual or legal position that may prevail during the relevant previous year as held by the Hon'ble Apex Court in the case of Saharanpur Electric Supply Co. Ltd. Vs. CIT [reported in 194 ITR page 294]? and
>
> iii. Whether the reasoning and finding of the Tribunal is proper by treating the impugned receipt in question as interest free loans and allowing the depreciation claimed against the assets acquired from the said receipt based on GO 22 dated 03.2.2016 which changes the nature of receipt as interest free loan, post facto the assessment based on the Comptroller and Auditor General of India's objection?" ."

4. The assessee is a wholly owned State Government Organization formed for the purpose of administration, management and control of minor ports, prior to which, the

management and control was exercised by the Tamil Nadu Port Department.

5. The assessee filed their return of income for the assessment year 2014-15 on 29.9.2014 declaring a total income of Rs.2,87,28,520/-. The case was selected for scrutiny and after service of notices both under Section 143(2) and Section 142(1) of the Act, the assessment was completed by order dated 30.12.2016 wherein the Assessing Officer held that the amounts provided by the Government of Tamil Nadu to the assessee was in the nature of grant for execution of various projects and that it had to be excluded from the cost of the asset as per Explanation 10 to Section 43(1) of the Act.

6. For the assessment year 2015-16, the assessee filed their return of income declaring a total income of Rs.7,49,68,680/-. Upon scrutiny, the assessment was completed by order dated 29.12.2017 with the same reasoning as assigned for the assessment year 2014-15.

7. As against the said assessment orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-2, Chennai [for brevity, the CIT(A)]. The appeals were allowed by two separate orders (i) dated 30.11.2017 for the assessment year 2014-15 and (ii) dated 22.11.2018 for the assessment year 2015-16. Being aggrieved by such orders, the Revenue preferred appeals before the Tribunal. However, they were dismissed by the common impugned order. Challenging the correctness of the common order passed by the Tribunal, the assessee is before us.

8. The short issue to be decided in these appeals is as to whether the amount expended by the Government of Tamil Nadu to the assessee was in the nature of a grant or a loan.

9. The Assessing Officer, after taking note of the stand taken by the assessee during the assessment proceedings, held that the assessee received only grant and not loan and by applying Explanation 10 to Section 43(1) of the Act, excluded the same from the cost of the asset. During the assessment proceedings, the assessee produced a Government Order in G.O.Ms.No.22 Highways and Minor Ports (HMI) Department dated 03.2.2016, by which, the Government decided to treat the assistance rendered to the assessee as an interest free loan. According to the Assessing Officer, the said Government Order was an afterthought and therefore, he maintained his original position and held that the amount received by the assessee was a grant.

10. Thus, we have to decide as to whether the assistance extended by the Government of Tamil Nadu to the assessee was in the nature of a grant or a loan.

11. We need not labour much to find an answer to this question, as it is contained in the various Government Orders, which have been passed in this regard and which have been placed before us by the assessee. In G.O. Ms.No.581 dated 19.10.2005, the Government sanctioned financial assistance to the tune of Rs.56.931 Crores for rehabilitation of tsunami damaged roads and bridges, ports and harbours. In this Government Order, there was a reference to two earlier Government Orders namely (i) G.O.Ms.No.379 Revenue Department dated 27.6.2005 wherein the Government issued administrative sanction for implementation of the Tsunami Emergency Assistance Projects (TEAP) with the Asian Development Bank (ADB) assistance at a cost of Rs.629.63 Crores; and (ii) G.O.Ms.No.418 Revenue Department dated 20.7.2005 wherein the Government constituted an Empowered Committee to clear the TEAPs. We have referred to these Government Orders to show that what was sanctioned to the assessee was a loan and not in the nature of a grant.

12. It appears that the assessee was also, at one point of time, under the wrong impression that it was a grant in aid. This impression arose probably on account of the fact that the expenditure sanctioned was to be debited from a particular Head of Account namely 5052, in which, there is a reference to grants in aid. However, even in the said Head of Account, as mentioned in G.O.Ms.No.581 dated 19.10.2005, the expression used is 'R.N. Dredging and rehabilitation works under Tsunami Emergency Assistance Projects (TEAP) with loan assistance from Asian Development Bank - Tamil Nadu Maritime Board - 09 - Grants in Aid - 02 - grants for capital expenditure." Thus, the Government Order clearly mentions that the assistance is by way of loan, which is from the ADB.

13. Other Government Orders namely G.O.Ms.No.668 dated 10.10.2006 and G.O.Ms.No.817 dated 14.12.2006 would also support the stand taken by the assessee. Therefore, the Tribunal rightly held that it is in the nature of a loan. In fact, we find the orders passed by the CIT(A) to be well reasoned orders wherein the Government of Tamil Nadu had taken note of the opinion given by the Advocate General of Tamil Nadu and it was found that there was no reason to ignore the opinion of the Advocate General of Tamil Nadu and accordingly, the assessee's appeals were allowed.

14. That apart, in G.O.Ms.No.22 dated 03.2.2016, there was a resolution passed by the Board of the assessee requesting the Government to treat the financial assistance as an interest free loan and the Government considered the same and issued orders that the financial assistance from the ADB for implementing various works to develop the infrastructural facility of the TEAP was treated as an interest free loan from the Government. The wordings of the Government Order clearly show that the amount, which was transferred to the assessee, was

the financial assistance given by the ADB, which would obviously show that it was a loan. Since it is an interest component, it appears that the assessee addressed to the Government and the Government, in turn, accepted the same and treated it as an interest free loan from the Government. Therefore, in all probabilities, the assessee's liability will be only to the Government and not to the ADB. The Assessing Officer was of the opinion that at best, the Government Order could be given prospective effect and doubted the bona fides of G.O.Ms.No.22 dated 03.2.2016 by observing that it is of recent origin to get over the issue regarding the claim for depreciation. We find from G.O.Ms.No.22 dated 03.2.2016 that the assessee has been addressing the Government from 30.1.2014 much prior to the assessments being taken up for consideration.

15. It is the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant that the original Government Order used the word 'grant' and that therefore, the Assessing Officer was right in treating the same as grant and not loan.

16. Admittedly, funds were sanctioned by a bank namely the ADB and there was no record to show that the same was a grant to the assessee. Furthermore, in the Government Order in G.O.Ms.No.581 dated 19.10.2005, it has been clearly stated that it is a loan from the ADB. Therefore, we are convinced to hold that all along, the financial assistance rendered to the assessee was treated as a loan at the instance of the bank and subsequently, pursuant to G.O.Ms.No.22 dated 03.2.2016, the amount expended was treated as an interest free loan to the assessee. Thus, we find that the CIT(A) and the Tribunal rightly granted relief to the assessee and the Revenue has not made out a case to interfere with the common impugned order.

17.Accordingly, the above tax case appeals are dismissed, the impugned common order is confirmed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

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

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

3. The Assistant Commissioner of Income Tax,
Non Corporate Circle-2, Chennai.

4. The Deputy Commissioner of Income Tax,
Non Corporate Circle-2, Chennai.

+1cc to Mr.G.Baskar, Advocate, S.R.No.33592
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.33637

SAI(CO)

CS/07/12/2020