IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.868 of 2017

Commissioner of Income Tax,
Chennai. ... Appellant

-Vs-

Shriram Retail Holdings Private
Limited,(Since Amalgamated with
Shriram City Union Finance Ltd)
NO.4, Mookambika Complex,
Lady Desika Road, Mylapore.
Chennai 600 004 ... Respondent

Prayer :: - Appeal filed against the order of the Income Tax Appellate Tribunal, Madras D Bench, dated 10.08.2016 in ITA No.885/Mds/2015 preferred against the order of the Commissioner of Income Tax(Appeals)-15 Chennai-34, dated 18.02.2015, made in ITA.No.395/A-15/13-14, against the order dated 07.01.2013, passed by the Deputy Commissioner of Income Tax, Company Circle VI(2), Chennai-34 made in PAN.No.AAJCS7325N

For Appellant : Mr.J.Narayanaswamy, Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

J U D G M E N T

(Judgment of the Court was delivered by Dr.Vineet Kothari,J)

The Court was held by Video Conference as per the Resolution of the Full Court dated 03 July 2020, by Judges at the respective residence and the counsel, staff of the Court appearing from their respective residences.

2. This appeal has been filed by the Revenue against the order dated 10.08.2016, raising the following purported substantial questions of law before us.

> "1.Whether on the facts and in the circumstances of the case the tribunal was right in holding that assessee is entitled for deduction u/s 14A and directing the assessing officer to re-examine the issue of disallowing of expenditure u/s 14A r/w r 80 in the light of the investment activity and directed to consider the expenditure from the assessee's business object and activity while computing the disallowance u/s. 14A?
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> 2. Whether on the facts and in the circumstances of the case the tribunal was right in holding that the assessee is eligible for the claim of short term capital loss with respect to the forfeited amount spent for acquiring the right to purchase the shares and even though the assessee had not acquired any capita asset I shares.?
>
> 3. Whether on the facts and in the circumstances of the case the tribunal was right in holding that expenditure computed u/s 14A r w R 80 for earning exempt dividend income cannot be added to the book profit computation as per section 115JB even though clause (f) to expn 1 to sec 115JB specifically provides for such addition.?

3. Heard Mr.J.Narayanaswamy, learned counsel for the appellant Revenue and Mr.R.Sivaraman, learned counsel for the respondent assessee.

4. However, it is submitted by the learned counsel for the respondent Assessee that the matter stood remanded back by the learned Tribunal to the Assessing Authority with regard to the issues under Section 14A of the Act as well as calculating book profits under Section 115JB of the Act and upon such remand, the Assessing Authority has passed fresh orders on 29.06.2017 and against the said order of the Assessing Authority, an appeal was filed before the appellate authority and the same was also dismissed vide order dated 31.01.2019 and therefore, the matter is again pending before the learned Tribunal for the second round of litigation. He, therefore, submitted that the present appeal filed by the Revenue has become infructuous.

5. Learned counsel for the appellant Revenue however sought to submit that Question No.3 was not remitted back to the Assessing Authority and the findings of the learned Tribunal to exclude the addition under Section 14A of the Act while computing book profits under Section 115JB of the Act, is against the Revenue and is contrary to the provisions of the Act.

6. However, learned counsel for the respondent Assessee submitted that these issues have also been decided by the lower authorities against the Assessee and the matter is at large before the learned Tribunal.

7. We are of the opinion that the present appeal filed by the Revenue, therefore, has become infructuous and since all the issues are open and at large to be argued again before the learned Tribunal in the second round of litigation as aforesaid, we decline to answer the questions involved in this appeal at this stage, leaving it free for the parties to agitate the matter again before the learned Tribunal.

8. With these observations, the present appeal by the Revenue is disposed of as infructuous. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST/kpl

To

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

2.The Commissioner of Income Tax
(Appeals)-15 Chennai-34

3.The Deputy Commissioner of Income Tax,
Company Circle VI(2) Chennai-34

T.C.A.No.868 of 2017

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