IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

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

Tax Case Appeal No.981 of 2019

Commissioner of Income Tax,
Chennai. .. Appellant

versus

M/s.Madras Refineries Ltd.,
Chennai. .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.1497/Mds/93 dated 29.10.2002 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, for the Assessment Year 1990-91, and against the order of the commissioner of Income Tax(Appeals), Madras-34, dated 28.10.1994 made in Apeal No.121/93-94, and against the order of the Deputy Commissioner of Income Tax, Special Range-VII, Madras-35 dated 27-09-93, made in No.47-003-CX-1137.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.R.Vijayaraghavan

JUDGMENT

T.S.SIVAGNANAM, J.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order dated 29.10.2002 in ITA No.1497/Mds/93 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, for the Assessment Year 1990-91.

2. The appeal has been filed by the revenue raising the following Substantial Questions of Law:

> “Whether in the facts and circumstances of the case, the Tribunal was right in upholding the order of the CIT (A)

> that interest on deposits in IDBI should be treated as business income purely because the deposits were made to comply with statutory provisions under the Income Tax Act?”

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Vijayaraghavan, learned counsel for the respondent/assessee.

4. The assessee, a joint venture company with the Government of India, claimed relief under Section 32AB of the Act. The Assessing

Officer did not agree the claim and the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-VII, Chennai, hereinafter referred to as 'CIT(A)'. The CIT(A) by an order dated 28.10.1994 held that the interest received by the assessee from the Fixed Deposit from IDBI should be treated as part of the business income only. The revenue filed appeal before the tribunal, which was dismissed by the impugned order. Challenging the same, the revenue is before this Court raising the above question and contending that it is the substantial question of law to be decided by this Court.

5. The Assessing Officer denied the relief to the assessee on the ground that the items are not plant and machineries and they are only pipes, steel plates, M.S.angles, etc., and these items do not support purchase of any new plant or machinery and therefore, it is not classified under Section 32AB of the Act.

6. The CIT(A) examined the correctness of this factual finding by taking note of the materials placed before the Court and also looking into whether the amount claimed by the assessee can be stated to be utilised for purchase of new plant and machinery. After referring to the dictionary meaning of 'purchase', the CIT(A) concluded that such transaction would not only be direct buying of the plant or machinery for consideration, which is contemplated by the term 'purchase' and the purchase can include either buying the item concerned directly or obtaining it by labour or acquiring by other means. Accordingly, the relief was granted to the assessee.

7. Correctness of the finding rendered by the CIT(A) was tested by the tribunal and the tribunal confirmed the finding by observing that the CIT(A) has restored the issue to the file of the Assessing Officer with a direction to verify the evidences to be furnished by the assessee, to show that the purchase of machinery was made during the period under

consideration, so as to be eligible for the deduction of the claim under Section 32AB of the Act and pass consequential orders.

8. Further, the tribunal noted that the CIT(A) has held that the interest received by the assessee from the deposits made in IDBI should be treated as business income only. These findings of fact coupled with law was affirmed by the tribunal in the impugned order and we agree with the elaborate reasoning given by the CIT(A). Thus, we find that no substantial question of law arises for consideration in this appeal.

9. In the result, the Tax Case Appeal filed by the revenue is dismissed and the order passed by the tribunal is confirmed. The substantial question of law as framed for consideration is not answered, as on facts, we find that no substantial question of law arises for consideration in this appeal. No Costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To
1.The Commissioner of Inceom Tax(Appeals)
Chennai-34.

2.The Income Tax Appellate Tribunal,
Madras 'B'Bench, Chennai.

3.The Deputy commissioner of Income Tax,
Special Range VII, Madras-34.

+1cc to Mr.T.Ravi Kumar, Advocate SR.24725

TCA No.981 of 2019

BR(CO)
CB(23/09/2020)