IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

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

T.C.A.No.1016 of 2019

The Commissioner of Income Tax,
Circle 1, Salem. .. Appellant

Versus

M/s.Tamil Nadu State Transport
Corporation (Salem) Limited,
12, Ramakrishna Road,
Salem 636 007,
PAN AACT7678 J .. Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''B'' Bench, Chennai dated 05.07.2019 in I.T.A.No.814/Chny/2018. Appeal filed against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 05/07/2019 in I.T.A.No.814/Chny/2018 Assessment year 2012-2013, against Assistant Commissioner of Income Tax Circle-1, Salem. PAN No. AAACT76785 Assessment year 2012-2013, against The Assistant Commissioner of Income Tax (Appeals) Salem in I.T.A.No.109/2015-2016 dated 29/12/2017 PAN No.AAACT76785 Assessment year 2012-2013, against Deputy Commissioner of Income Tax, Circle-1, Salem , PAN No.AAACT76785 Assessment Year 2012-2013.

For Appellant : Ms.S.Premalatha
For Respondent : Mr.G.Baskar

JUDGMENT

[Order of the Court was made 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 05.07.2019 passed by the Income Tax Appellate Tribunal ('the Tribunal' for brevity), Bench 'B' Chennai in I.T.A.No.814/Chny/2018 for the assessment year 2012-13. The appeal was admitted on 12.12.2019 with the following Substantial

Questions of Law:

1. Whether on the facts and circumstances of the case, the Tribunal was right in not considering the fact that the assessee has incurred interest expenditure and made investment more than its reserves and surpluses?

2. Whether on the facts and circumstances of the case the Tribunal was right in confirming the assessee's claim that interest expended for earning exempt income has to be allowed as business expenditure?

2. It is not in dispute by the Revenue that the Substantial Question of Law framed for consideration in this appeal was considered in T.C.A.No.732 and 733 of 2018 dated 07.07.2020 (Commissioner of Income Tax, Corporate Circle - III(1), Chennai Vs. M/s.Tidal Park Limited (T.C.A.No.732 and 733 of 2018 dated 07.07.2020) and answered against the Revenue and it is relevant to extract the following from the said decision:

> 6. Further, the Bombay High Court in the case of Godrej & Boyce Manufacturing Company Limited, Mumbai Vs. Deputy Commissioner of Income Tax, reported in (2010) 328 ITR 0081, has elaborated the procedure to be followed by the Assessing Officer under Section 14A in the following terms.
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> > "The following principles would emerge from s. 14A : (a) the mandate of s. 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income of the assessee; (b) sec. 14A(1) is enacted to ensure that only expenses incurred in respect of earning taxable income are allowed; (c) the principle of apportionment of expenses is widened by s. 14A to include even the apportionment of expenditure between taxable and non-taxable income of an indivisible business; (d) the basic principle of taxation is to tax net income. This principle applies even for the purposes of s. 14A and expenses towards non-taxable income must be excluded; (e) once a proximate cause for disallowance is established—which is the relationship of the expenditure with income which does not form part of the total income—a disallowance has to be effected. All expenditure incurred in relation to

income which does not form part of the total income under the provisions of the Act has to be disallowed under s. 14A. Income which does not formpart of the total income is broadly adverted to as exempt income as an abbreviated appellation. Under sub-s. (2), the AO is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in s. 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the AO to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the AO is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income. Moreover, the satisfaction of the AO has to be arrived at, having regard to the accounts of the assessee. Hence, sub-s. (2) does not ipso facto enable the AO to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The AO must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the AO must be arrived at on an objective basis. It is only when the AO is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. Sub-s. (3) of s. 14A provides for the application of sub-s. (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act.

7. The above legal position has been rightly followed by the tribunal while deciding the assessee's case and therefore, rightly dismissed the appeal filed by the revenue. Thus, we find that the Substantial Question of Law No.2 has to be answered against the revenue and in favour of the assessee.

3. Following the said decision, the Tax Case Appeal is dismissed and the Substantial Questions of Law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Commissioner of Income Tax,
Circle 1, Salem.

2.The Tamil Nadu State Transport
Corporation (Salem) ltd.
Salem 636 007.

3.The Income Tax Appellate Tribunal 'B' Bench
Chennai.

4.Assistant Commissioner of Income Tax Circle-1
Salem.

5.The Commissioner of Income -Tax-(Appeals),
Salem.

6.The Deputy Commissioner of Income Tax Circle-1,
Salem.

+1 cc to M/s.G.Baskar, Advocate Sr.No. 29971
+1 cc to M/s.M.Swaminathan, Advocate Sr.No. 29847

T.C.A.No.1016 of 2019

VSNII(CO)
RMP(28/09/2020)