In the High Court of Judicature at Madras

Dated : 01.10.2020

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.783 of 2018

M/s.Express Infrastructures Pvt.
Ltd., Chennai-2. …Appellant

Vs

The Deputy Commissioner of
Income Tax, Company Circle
-II(1), Chennai-34. …Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.6.2018 made in ITA.No.930/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2009-10.

Appeal against the order dated 30.12.2016 made in ITA.No.77/CIT(A)-9/2011-12 on the file of the Commissioner of Income Tax (Appeals)-9, Chennai -34 for the Assessment Year 2009-10. Against the Order dated 30.11.2011 made in PAN/GIR.No.AABCE5521G on the file of the Deputy Commissioner of Income Tax Company Circle II (1), Chennai for the Assessment Year 2000-10 respectively.

For Appellant : Mr.G.Baskar

For Respondent : Mr.Karthik Ranganathan, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 13.6.2018 made in ITA.No.930/Chny/2017 on the file the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2009-10.

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

> "i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest income earned from the fixed deposits is to be treated under the head 'income from other source' and not business income ?
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> ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding that the interest received by the appellant is income on commercial principles and not allowing the same to be netted off against the capital work in progress ?
>
> iii. Whether the Tribunal misdirected itself in law in holding that interest which accrued on funds deployed with the bank could be taxed as income from other sources and not as capital receipt liable to be set off against pre-operative expenses ?
>
> iv. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there was no direct nexus between the interest earned and the short deposits, which were fully made with the borrowed funds ? and
>
> v. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that income tax is attracted at the point when the income is earned without controverting on the point that the appellant had not commenced its business during this year ?"

3. We have heard Mr.G.Baskar, learned counsel for the appellant – assessee and Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent – Revenue.

4. The assessee, which is a company engaged in the business of developing and maintenance of commercial complex, filed its return of income for the assessment year under consideration namely AY 2009-10 on 30.9.2009 declaring a total income of Rs.2,98,060/-. Subsequently, a revised return was filed on 28.9.2010. The Assessing Officer completed the assessment under Section 143(3) of the Act vide order dated 30.11.2011 arriving the income at Rs.65,75,730/- after bringing

to tax the interest income of Rs.62,77,671/- under the head 'Income from Other Sources'.

5. Aggrieved by such addition, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-9, Chennai-34 [for brevity, the CIT(A)]. In the grounds of appeal filed before the CIT(A), the assessee contended that the Assessing Officer ought to have seen that the fixed deposits were made in the pre-operative period and hence, the same were to be considered as part of the project cost and that the Assessing Officer erred in relying upon the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT [reported in (1997) 227 ITR 172]. Further, the assessee faulted the Assessing Officer for relying upon the decision of this Court in the case of CIT Vs. Nizar Ahmed & Co. [reported in 259 ITR 244].

6. The CIT(A), after considering the factual position as submitted by the assessee that the interest amount earned from the fixed deposits was in the nature of pre-operative periods, examined the case and held that the stand taken by the assessee could not be accepted and supported his conclusion by referring to the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd.

7. The assessee, being aggrieved by the order dated 30.12.2016 passed by the CIT(A) dismissing their appeal, preferred an appeal before the Tribunal. Before the Tribunal, the assessee contended that they obtained loans from various financial institutions solely for the purpose of constructing a shopping mall and that the interest received was inextricably connected with the business purpose. The Tribunal, considering the factual position, concurred with the view taken by the Assessing Officer and the CIT(A) and dismissed the appeal by the impugned order. Hence, the assessee is before us.

8. After hearing the learned counsel for the appellant, we find that the plea raised by the assessee before us that their business had commenced and therefore, the interest amount should be allowed, appears to be raised for the first time before this Court, as the assessee, before the Assessing Officer, the CIT(A) and the Tribunal, submitted that the fixed deposits were in the pre-operative period and therefore, it had to be considered as part of the project cost. Thus, the plea raised before us for the first time appears to be contrary to the factual position as pleaded by the assessee themselves. Thus, the said contention raised by the assessee is not acceptable.

9. The learned counsel for the assessee has relied upon the decision rendered by us in the case of Daimler India Commercial Vehicles (P.) Ltd. Vs. DCIT [reported in (2019) 416 ITR 343].

10. This decision is relied upon in support of the submission that the assessee before us commenced business. The facts in the decision rendered by us in the case of Daimler India Commercial Vehicles (P.) Ltd., are totally different from the facts before us. In the said case, the assessee, which was a company formed with an objective of manufacture and sale of commercial vehicles in India and design and development of vehicles to suit for Indian market sourcing of components for sale, claimed deduction of operating and financial expenses on the ground that it had already commenced various activities and merely because the manufacture and sale of the vehicles did not take place during the relevant year due to non completion of construction, it was denied the benefit of deduction on the ground that the business of the assessee had not been set up. Upon going through the facts, we had held that the order passed by the Assessing Officer was erroneous noting that the assessee in the said case was in a composite business or in other words, it had a bucket of business activities, which had been clearly spelt out in the Memorandum of Association and sufficient proof had been filed by the assessee therein to establish that several of its activities had already commenced except for manufacturing and sale of commercial vehicles, which could be done only after the construction was completed. We find the said decision to be only inapplicable to the facts and circumstances of the case on hand.

11. As rightly pointed out by the learned Senior Standing Counsel appearing for the respondent - Revenue, the issue involved has been settled by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. We find that the Assessing Officer, the CIT(A) and the Tribunal applied two decisions of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd., and in the case of CIT Vs. Bokaro Steels Ltd. [reported in 236 ITR 315]. For all the above reasons, we find no grounds to interfere with the order passed by the Tribunal.

12. Accordingly, the above tax case appeal is dismissed and the substantial questions of law raised are answered against the assessee. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Deputy Commissioner of Income Tax,
Company Circle-II(1),
Chennai-34.

3.The Commissioner of Income Tax, (Appeals)-9,
Chennai - 34.

+1cc to Mr.G.Baskar, Advocate, S.R.No. 32875

TCA.No.783 of 2018

LN (CO)
GN(15/10/2020)