IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal Nos. 100 of 2007 and 1431 of 2008

Commissioner of Income Tax
Chennai

.. Appellant in both Tax Case Appeals

Versus

M/s. Balaji Distilleries Ltd
No.9, Bazullah Road
T. Nagar
Chennai – 600 017

.. Respondent in both Tax Case Appeals

Prayer in T.C.A. No. 100 of 2007: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 25.08.2006 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1442/Mds/2003.

Prayer in T.C.A. No. 1431 of 2008: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 31.01.2008 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.1057/Mds/99.

For Appellant : Mr.T.Ravikumar in both TCAs.

For Respondent : Mr. N. Muthukumar in both TCAs.

COMMON JUDGMENT

(Delivered by **R. MAHADEVAN, J.**)

These tax case appeals have been filed by the appellant / Revenue, challenging the orders dated 25.08.2006 and 31.01.2008 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.Nos.1442/Mds/2003 & 1057/Mds/99, relating to the assessment years 1999-2000 & 1988-1989 respectively.

2. In T.C.A No. 100 of 2007, the appellant has raised the following substantial questions of law:

> *"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee was entitled to depreciation on assets taken on hire purchase by it and leased out to the original owner?*
>
> *2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee*

was entitled to depreciation on assets involved in a sale and lease back transaction, without knowing its true value?

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the disallowance made on account of interest on borrowing relatable to sale and lease back transactions is not sustainable?

4. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the disallowance made on account of interest on loan under the asset credit scheme for the purchase of asset is not sustainable?"

3. By order dated 18.09.2008, the appeal in T.C.A No. 1431 2008 has been admitted on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in adjudicating the assesse's appeal and in holding that filing of statement u/s. 209A(1)(a) is not a pre-condition for filing of estimate u/s 209(4) of the Income Tax Act?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the impugned issue is a debatable one and cannot be dealt with u/s 154?"

4. When these matters were taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeals shall not be filed/pursued by the

Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). It is further submitted that in these cases, the tax effect is less than the threshold limit and there is no audit objection involved. A memo has been filed through e-mail dated 09.12.2021 to that effect.

5. In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeals, wherein, the tax effect is said to be less than the monetary limit imposed, are dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

[R.M.D, J.] **[M.S.Q, J.]**
15.12.2021

Internet : Yes
Index : Yes / No
dhk

To

1. The Income Tax Appellate Tribunal,
   Madras "A" Bench.

2.Commissioner of Income Tax
   Chennai – 600 034

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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Tax Case Appeal Nos. 100 of 2007
& 1431 of 2008

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