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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM :

THE HON'BLE MR.JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.NO.684 OF 2009

T.V.Sundaram Iyengar & Sons Ltd.,
Madurai.

...Appellant

Versus

The Commissioner of Income tax
Madurai.

...Respondent

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "B" Bench Chennai, dated 12.09.2008 passed in I.T.A.No.2122/Mds/2007 against the Order of the Deputy Commissioner of Income Tax Company Circle - I, Madurai dated 05.03.2004 passed in PAN No.AAACT0159K for the Assesment year 2001-2002 against the Order of the Commissioner of Income Tax (Appeals)-I, madurai dated 30.03.2007 passed in ITA Nos.102/04-05 against the order of the Income Tax Appellate Tribunal Bench 'B', Chennai dated 12.09.2008 passed in ITA No.2122/Mds/2007 for the Assesment year 2001-2002.

For Appellant : Mr.N.V. Balaji

For Respondent : Mr. M. Swaminathan,
Senior Standing Counsel
For Ms. S.Premalatha,
Junior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal is filed by the appellant/assessee, challenging the order dated 12.09.2008 passed by the Income Tax Appellate Tribunal 'B' Bench Chennai, in I.T.A.No.2122/Mds/2007, relating to the assessment year 2001-02.

2. By order dated 03.08.2009, this court admitted the aforesaid tax case appeal on the following substantial questions of law:



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"1. Whether on the facts and in the circumstances of the case the Tribunal is justified in law in holding that the non-compete fee received by the assessee company from the UK company - Royal sun alliance Insurance plc for restraining itself from entering the insurance business was not a capital but a revenue receipt.

2. Whether on the facts and in the circumstances of the case the Tribunal is justified in law in ignoring material evidence and in holding that the receipt was not a non-compete fee but is a revenue receipt for utilization of business advantages of the assessee and whether such a conclusion was based on any material evidence.

3. Whether on the facts and in the circumstances of the case the Tribunal is justified in law in holding that in respect of UPS and Voltage Stabilizer the assessee is entitled to only 25% of depreciation and not 100% as claimed.

3. The learned counsel for the appellant submitted that the questions of law 1 & 2 raised herein have already been considered and decided by this Court in favour of the assessee, in the case of Sundaram Finance Ltd., vs. Asst. Commissioner of Income Tax, Chennai, vide orders dated 06.03.2019 & 19.06.2019 in TCA.Nos.159 of 2009 and 1938 of 2008 respectively. For better appreciation, the relevant paragraphs of the latter order dated 19.06.2019 in T.C.A.No.1938 of 2008 are extracted hereunder:

"10. The agreement entered into between the assessee and the U.K.Company is tiled as "Letter of Intent" agreed and accepted by the parties on 5th April, 2000 in London. The following clause is the subject matter of interpretation:

"At the instance of the U.K.Company, assessee restrained itself from interfering with any other party and also refrained from itself entering the insurance business. In consideration of this restraint and the assurance to join hands only with U.K.Company, agreed to pay lumpsum of E 2.4 million to the assessee."

11. While completing the assessment, the assessing officer cannot examine the exigency of business as to what would be the prudent decision from the point of view of the assessee. What is required to be seen is the interpretation which has to be given to the covenant in the Letter of Intent. The assessee has been non-suited on the ground that they were never in the insurance business and the covenant cannot be



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considered as a restrictive covenant. We do not agree with the said finding of the assessing officer because there is a background which cannot be ignored by the assessing officer during the relevant point when the "Letter of Intent" was signed. It was the first time, the Government of India took a decision to permit foreign insurance companies to set up general insurance business in India. The entire matter was regulated by the Government of India under the relevant regulations. Thus, several competing companies in India were desirous of starting insurance business with foreign partnerships / Joint ventures. Therefore, commercial prudence demanded the U.K. Company to restrain the assessee, preventing them from entering into insurance business, which they had not done earlier, secondly, preventing the assessee from entering into an agreement with any other foreign insurance company. The condition is clear and lucid and it is to be treated as a 'restrictive covenant' and merely because the assessee was not in the insurance business is not a ground to read down the condition. Thus, we are of the considered view that the interpretation given by the CIT(A) to the said covenant is just and proper and we do not agree with the finding of the assessing officer as well as the Tribunal in this regard.

12. Mr. T. Ravikumar, learned Senior Counsel for the respondent / revenue vehemently contended that the factual finding that the payment was received by the assessee before the commencement of business is the finding, which stares against the assessee and the same has not been challenged. In our considered view, we are afraid that such a finding cannot work against the assessee. The terms and conditions of the Letter of Intent is clear, in the sense, that it is the condition which precedes other conditions, which relates to 'Investment for allotment of shares'. In fact, this amount which was agreed to be paid as non-compete has been received by the assessee on 23.10.2000 and immediately invested in the shares of the company. To be noted that all the transactions are in the same assessment year, i.e., 2001-2002.

13. In the light of the above, we are of the clear view that the CIT(A) was fully justified in holding that the amount received by the assessee was a capital receipt and was right in deleting the addition made by the assessing officer. Further, we note that the amount has been credited to the capital receipt



account in the balance sheet for the year ending 31.03.2001 and the amount does not come anywhere within the inclusive definition of Income as envisaged in Section 2(24).

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14. At this juncture, it will be beneficial to refer to the decision of Hon'ble Supreme Court in Guffic Chem (P) Ltd., V. Commissioner of Income Tax & Another reported in (2011) 332 ITR 0602. The Hon'ble Supreme Court has held that 'payment received as non-competition fee under a negative covenant has to be treated as a capital receipt till the Assessment Year 2003-04'. The said decision supports the case of the assessee.

15. The learned counsel appearing for the assessee referred to the decision of the assessee's own case in TCA No.159 of 2009 dated 06.03.2019, which pertains to the capital subsidy received by the assessee from the U.K.Company.

16. It is the submission of Mr.Ravikumar, learned Senior Standing Counsel for the respondent / revenue that the substantial question of law No.1 pertains to capital subsidy and in fact, the decision would ensure in favour of the Revenue. We do not agree with the said submission as the Letter of Intent provides "additional investment" at the instance of the assessee and the condition stated 'if at the time of finalisation of shareholders agreement it is found that assessee is required to further infuse equity during the initially agreed pay-back period, U.K.Company will make a compensatory payment to assessee in an amount to be mutually agreed, before the finalisation of the stakeholders agreement'.

17. Thus, we are of the clear view that the order passed by the Tribunal dated 31.07.2007 reversing the order passed by CIT(A) calls for interference. In the light of the above, the appeal filed by the assessee is allowed and the order passed by the tribunal is set aside and the order passed by the CIT(A) dated 13.01.2005 is restored and the substantial question of law framed is answered in favour of the assessee. No costs."

4. As regards the third question of law, the learned counsel for the appellant fairly submitted that the same has already been considered and decided by this court by order dated 18.01.2019 in TCA No.23 of 2019, wherein, it was held that the



"4...with regard to the rate of depreciation that can be claimed for UPS and Routers, the Tribunal in the impugned order relied upon earlier decision of the Chennai Tribunal as well as the decision of the High Court of Delhi in the case of CIT vs. Oriental Ceramics and Industries Limited reported in (2013) 358 ITR 49 (Del.) and held that the assessee would be entitled to depreciation at 60%. Therefore, we are of the considered view that the finding rendered by the Tribunal is just and proper.

6. This Court had an occasion to consider as to whether the printers are eligible for depreciation at 60%. In the case of CIT vs. Cactus Imaging India (P) Ltd., reported in [2018] 406 ITR 406 (Mad) and held that the assessee was entitled to depreciation at 60%. We find that there is no finding recorded by the Tribunal on the said head. Accordingly, Substantial Question of Law No.1 stands rejected. "

6. In the light of the aforesaid decisions and taking note of the submissions made by the learned counsel appearing for both sides, we hold that the questions of law 1 and 2 are decided in favour of the assessee and against the revenue; and the third question of law is decided to the effect that the assessee is entitled to the depreciation at 60% as against 25% assessed by the respondent / revenue.



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7. Accordingly, the Tax case Appeal stands allowed to the extent as indicated above. No costs.

Sd-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

- 1.The Commissioner of Income Tax (Appeals)-I
Madurai.
- 2.The Income Tax Appellate Tribunal,
'B' Bench Chennai,
- 3.The Assistant Commissioner of Income Tax,
Company Circle I,
Madurai.

+1cc to Mr.M.Swaminathan, Advocate SR.No.62497

T.C.A.No.684 of 2009

GSM(CO)
RVM(12/01/2022)