



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

TCA.Nos.656, 657, 658 & 659 of 2010
and
MP.Nos. 1, 1 & 1 of 2010

Commissioner of Income Tax
Chennai ... Appellant in all Tax Case Appeals

Vs

M/s. TVS Electronics Ltd,
"Jayalakshmi Estates",
29, Haddows Rd,
Chennai. ... Respondent in all Tax Case
Appeals

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai "C" Bench, dated 30.10.2009 in I.TA.No.2303/Mds/2008, .TA.No.2304/Mds/2008, I.TA.No.224/Mds/2009 and I.TA.No.225/Mds/2009 for the Assessment Year 2000-2001 & 2001- 2002 respectively against the order of the Commissioner of Income Tax (Appeals)-III No.121, Mahatma Gandhi Road, Chennai-600 034 dated 31.10.2008 in ITA Nos.460/07-08/A-III, ITA 461/07-08/A-III against the order of the Assistant Commissioner of Income Tax Company Circle -III (2), Chennai 600 034 dated 27.12.2007 on PAN/GIR No.AAACT2957N for the Assessment Year 2000-2001 & 2001-2002 respectively.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel
assisted by Mrs. V.Pushpa,
Junior Standing Counsel
in all cases

For Respondent : Mr.R.Venkatanarayanan
Mr.Subbaraya Iyer in all cases

COMMON JUDGMENT

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

These tax case appeals have been filed by the appellant/Revenue, challenging the order dated 30.10.2009 passed by the Income Tax Appellate Tribunal, Chennai 'C' Bench, in I.TA.No.2303/Mds/2008, I.TA.No.2304/Mds/2008, I.TA.No.224/Mds/2009 and I.TA.No.225/Mds/2009 respectively, relating to the assessment years 2000-01 and 2001-02.



2. On 20.08.2010, T.C.A Nos. 656 and 657 of 2010 have been admitted by this Court on the following substantial question of law:

"Whether on the facts and circumstances of the case the Tribunal was right in holding that the reopening of assessment was not valid in law and thereby setting aside the reassessment proceeding?

3. On the same day namely 20.08.2010, T.C.A Nos. 658 and 659 of 2010 have been admitted by this Court on the following substantial questions of law:

"(1) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the revenue's appeal is infructuous?

(2) Whether on the facts and circumstances of the case assessee is entitled for deduction under section 35(2A)?

(3) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the direction to the Assessing Officer by the commissioner of income Tax (Appeals) with respect to 244A interest on refund was justified?

(4) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the interest under section 234D is not leviable on the assessee?

4.1 Today, when the matters were taken up for consideration, the learned counsel for the appellant/Revenue as well as the respondent/assessee jointly submitted that the substantial question of law raised in TCA Nos.656 and 657 of 2010 and the substantial question of law Nos. 1 and 2 in TCA.Nos. 658 and 659 of 2010 are covered in favour of the assessee; and the fourth substantial question of law in TCA Nos.658 and 659 of 2010 is covered in favour of the Revenue, by judgment dated 19.03.2019, passed in TCA.Nos.1457 and 1458 of 2008, the relevant passage of which, is usefully extracted hereunder:

"4.Mr.M.Swaminathan, learned senior standing counsel for the appellant - Revenue, has submitted that since the assessee did not produce the requisite approval of the Scientific Research undertaken by him for the period in question though such approval was available for the period prior to Assessment Year 2003-2004 and for the period subsequent to it, the mandatory condition of producing the approval for the Assessment Year in question was not complied with by the Assessee and therefore, the learned Tribunal erred in allowing such weighted deduction of expenditure incorporated under Section 35(2AB) of the Act.

5.On the Second Question of Levy of Interest under Section 234D of the Act on the excess refund made to the Assessee along with the Assessment intimation sent to him under section 143(1) of the



WEB COPY

Act, the learned senior standing counsel for the Revenue drew our attention to a judgment of this court in the case of Commissioner of Income Tax v. Fisher Sanmar Ltd, (2014) 361 ITR 296 (Mad), wherein, a Division Bench of this Court held that if the regular assessment of the Assessee is made after the amendment of provisions of Section 234D of the Act w.e.f. 01.06.2003, then, the provisions of Section 234D for levy of interest on the excess refund amount would become applicable, even though the assessment period may be prior to the said date of amendment."

"7. We do not concur with the submission made by the learned Senior Standing Counsel for the Revenue Mr.M.Swaminathan on the First Question of allowability of weighted deduction to the Assessee under Section 35 (2AB) of the Act since the requisite approval for the project on which expenditure was incurred by the Assessee on Scientific Research was approved for the period prior and even subsequent to Assessment Year 2003-2004. In the case before us, we are of the opinion that the said condition of approval stood substantially complied with. The Assessee had contended before the authorities below that approval from the Ministry concerned of the Central Government for the year in question was also under active consideration and awaited.

8. The Assessee cannot be punished for the bureaucratic delay in giving such approval for the year in question, which was in the hands of the Department concerned of the Central Government itself. On the very fact that for the period anterior and posterior to the year in question such approval was very well on the record of the Revenue, the weighted deduction for the expenditure incurred on the Scientific Research could not have been disallowed by the authorities below and, therefore, the learned Tribunal, in our view, rightly held such Scientific Research expenditure to be allowable under Section 35 (2AB) of the Act. Therefore, first two Questions of Law are answered in favour of the Assessee and against the Revenue.

9. As for the Question of Levy of Interest under Section 234D of the Act, though computation of interest will depend upon the appeal effect order to be passed, the quantum of net payment is to be determined accordingly, after allowing weighted deduction under Section 35 (2AB) of the Act, as indicated above. The provisions of Section 234D of the Act have been held applicable for Assessment Year 2003-2004 in question in terms of the decision of the Co-ordinate Bench of this Court in the case of Fisher Sanmar Ltd., cited supra. Accordingly, Questions of Law Nos.3 and 4 are answered in favour



of the Revenue and against the Assessee.

10. Appeals of the Revenue are allowed in part, as above. No costs."

4.2 In the light of the above judgment, which squarely applies to the facts of the present case, the substantial question of law in TCA Nos.656 and 657 of 2010 relating to reassessment proceedings for deduction under section 35(2A) and the substantial question of law Nos.1 and 2 in TCA Nos.658 and 659 of 2010, are answered in favour of the assessee and against the Revenue and the fourth substantial question of law in TCA Nos.658 and 659 of 2010 is answered in favour of the Revenue and against the assessee.

5.1 In addition, the learned counsel for the appellant / Revenue fairly submitted that the third substantial question of law raised in TCA.Nos. 658 and 659 of 2010 is covered by the decision of this court in Commissioner of Income Tax v. Upasana Finance Ltd (2021) 129 taxmann.com 253 (Madras), wherein, this court placed reliance on the judgments of the supreme court in Commissioner of Income Tax, Gujarat vs. Gujarat Fluoro Chemicals (2014) 42 taxmann.com 1 (SC) and the Division Bench of the Delhi High Court in CIT v. Indian Farmer Fertilizer Co-operative (2016) 71 taxmann.com 37, to the legal proposition that "the only amount which an assessee aggrieved by delayed payment can legitimately claim under the statute, is interest and that, no other interest on such statutory interest is payable"; and "to the extent it directs payment of any sum over and above interest payable under section 244A(1) to the assessee cannot be upheld" and accordingly, decided the issue in favour of the Revenue.

5.2 For better appreciation, the relevant passage of the judgments referred to above, are extracted hereunder:
Supreme Court in Gujarat Fluoro Chemicals (supra)

"6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessee and also by the Revenue. They are of the view that in Sandvik Asia Ltd's case (supra), this Court had directed the Revenue to pay interest on the statutory in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in Sandvik Asia Ltd.'s case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court, had come to the conclusion that there was an inordinate delay on the part of the revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay



compensation for the same not an interest on interest.

8. Further, it is brought to our notice that the Legislature by the Act No.4 of 1988 (w.e.f.01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

Delhi High Court in Indian Farmer Fertilizer Co-operative case (supra):

"8. In Sandvik Asia Ltd (supra), the Court admittedly was dealing with facts prior to the insertion of Section 244A. Therefore, it would be inappropriate for this court to consider that judgment now as binding authority. More importantly, Sandvik Asia Ltd (supra) was explained by the larger Bench i.e., three Judge Bench decision in Gujarat Fluoro Chemicals (supra) where the supreme court categorically held that the only amount which an assessee aggrieved by delayed payment can legitimately claim under the statute is interest and that "no other interest on such statutory interest" is payable. This ruling, in the opinion of this court, rendered by a larger Bench, would have to be followed as opposed to the ratio in H.E.G Ltd (supra) where the Supreme Court had expressed a contrary opinion by indicating that the interest component towards the delayed payment of the tax refund would partake of the character of the 'amount of due' under section 244A. In other words, H.E.G Ltd. (supra) seems to suggest that there would be dues on bar, refund and delayed interest. Clearly, that view has not been approved in Gujarat Fluoro Chemicals (supra). It was urged during the hearing that India Trade Promotion Organisation (supra) has become final since the revenue's appeal was withdrawn. This court is of the opinion that such detail notwithstanding, the law declared in Gujarat Fluoro Chemicals (supra) is binding and permits no deviation".

5.3 Following the aforesaid judgments, the third substantial question of law involved in T.C.A. Nos. 658 and 659 of 2010 is answered in favour of the Revenue. Accordingly, the orders passed by the Income Tax Appellate Tribunal are set aside and the matter is remitted back to the Assessing Officer for fresh consideration, in the light of the ratio laid down by the supreme court in Gujarat Fluoro Chemicals (supra) and pass orders, after giving notice to the assessee.



6. All the Tax Case Appeals are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

av

To

1. The Income Tax Appellate Tribunal,
Chennai "C" Bench, Chennai.
2. The Commissioner of Income Tax, Appeals (III)
Chennai -600 034.
3. The Assistant Commissioner of Income Tax,
Company Circle-III(2) Chennai-600 034.

+1cc to Mr.Subbaraya Iyer, Advocate SR.No.64557

+2ccs to Mr.M.Swaminathan, Advocate SR.No.64553,64552

TCA.Nos.656, 657, 658
& 659 of 2010

GSM(CO)
GMY(04/02/2022)