IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM :

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

T.C.A. NO. 660 OF 2010

Commissioner of Income Tax
Chennai. .. Appellant

Versus

M/s.TVS Electronics Ltd.,
"Jayalakshmi Estates",
29, Haddows Road,
Chennai.
... Respondent

Appeal 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.226/Mds/2009.

Against the order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai-600034 dated 31.10.2008 ITA.No.462/07-08/A-III, PAN.AAACT2957N for the Assessment year 2002-2003 and against the order of the Assistant Commissioner of Income Tax Company Circle III(2), Chennai dated 31.12.2007 P.A.No./G.I.R.No.AAACT2957N Ward/Circle/Range, Company Circle-III(2), Chennai-34. Status-Company for the Assessment Year 2002-2003.

For Appellant : Ms.V. Pushpa, Standing Counsel for IT
For Respondent : Mr.Subbaraya Iyer

J U D G M E N T

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

This tax case appeal has 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.T.A.No.226/Mds/2009, relating to the assessment year 2002-03.

2. By order dated 20.08.2010, this court admitted the aforesaid tax case appeal on the following substantial question of law:

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding interest under Section 234 D is leviable only from assessment year 2004-05.

3. Today, when the matter was 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 herein has already been considered and decided by this Court in favour of the Revenue by judgment dated 19.03.2019 in the assessee's own case in TCA.Nos.1457 and 1458 of 2008, the relevant passage of which, is usefully extracted hereunder:

> "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 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."

> "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.Following the above decision, the question of law raised in this appeal is answered in favour of the revenue and against the assessee. Accordingly, this Tax Case Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

av/rsh

To

1.The Income Tax Appellate Tribunal,
Chennai "C" Bench,

2.The Commissioner of Income Tax Appeal III,
Chennai-34.

3.The Assistant Commissioner of Income Tax
Company Circle III (2), Chennai

+1cc to Mr.Subbaraya Iyer, Advocate, S.R.No.66509
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.66511

T.C.A.No.660 of 2010

AD(CO)
PM/20/01/2022