IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No. 423 of 2012

Commissioner of Income Tax,
Chennai. ... Appellant/Appellant

v.

M/s. TVS Finance and Services Ltd.,
(Formerly known as Harita Finance Ltd.
Which was formerly known as TVS Lakshmi
Credit Ltd.)
Jayalakshmi Estates, 29(old No.8),
Haddows Road
Chennai - 600 006. ... Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 05.07.2012 in I.T.A.No.961/Mds/2012 for the Assessment Year 1997-98 against the order of the Commissioner of Income Tax, (Appeals)-XII dated 31/01/2012 and made in ITA No.221/2007-08 against the assessment order dated 28/03/2002 and made in PAN/GIR No.HX2025 of the Deputy Commissioner of Income Tax Company Circle II(2) Chennai-600 034.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
and Mrs. V. Pushpa

For Respondent : Mr.Venkata Narayanan



JUDGMENT
(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.961/Mds/2012 in respect of the Assessment Year 1997-98 on the file of the Income Tax Appellate Tribunal, Chennai,"A" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above appeal was admitted on the following substantial question of law:

> " Whether on the facts and circumstances of the case, the Tribunal was right in upholding that the assessee was entitled to deduction under section 35D, on expenditure incurred for expansion of capital base which is available only for an Industrial undertaking even though the assessee is only a finance company?"

3. When the appeal is taken up for hearing, Mr. M.Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the question of law involved in the present appeal is covered by the decision of the Hon'ble Division Bench of this Court dated 03.01.2019 made in TCA Nos. 339 to 341 of 2011 [Commissioner of Income Tax - I, Chennai. v. M/s.TVS Finance & Services Ltd., Chennai- ] wherein the Hon'ble Division Bench held as follows:-

> " .............. 3. So far as the second substantial question of law in T.C.(A) No.339 of 2011 and the substantial question of law in T.C.(A) Nos.340 and 341 of 2011 are concerned, they pertain to lease equalization charges. The learned Senior Standing Counsel for the Revenue fairlys tates that the said question has been decided against the Revenue by the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Virtual Soft Systems Ltd., (2018) 404 ITR 0409 (SC).
>
> 4.Accordingly, the said question is decided against the Revenue and the appeals are dismissed as against the said question of law, i.e., in respect of lease equalization charges.
>
> 5.So far as the first substantial question of law in T.C.(A) No.339 of 2011 is concerned, the Tribunal has allowed the same on the ground that such expenses were allowed in the assessment years 1990-91/1993-94 and 1/10 th of the same was allowed 8/5 years out of 10 years till the assessment year 1996-97.
>
> 6.In our considered view, the Tribunal should have remanded the matter to the Assessing Officer to cause verification and then decide the issue. Therefore, we are of the view that the first substantial question of law in T.C.(A) No.339 of 2011 is to be remanded to the Assessing Officer for fresh consideration.

7.Accordingly, T.C.(A) No.339 of 2011 is partly allowed, the finding rendered by the Tribunal, insofar as it relates to the first substantial question of law, is set aside and the matter is remanded to the Assessing Officer to take a fresh decision on merits.

8.In respect of the second substantial question of law in T.C.(A) No.339 of 2011 and the substantial question of law in T.C.(A) Nos.340 and 341 of 2011, as stated above, is answered against the Revenue, following the decision of the Hon'ble Supreme Court in Virtual Soft Systems Ltd. (supra). No costs."

4. Mr.Venkata Narayanan, learned counsel appearing for the respondent also submitted that in view of the Judgment relied upon by the learned Senior Standing Counsel appearing for the appellant, the appeal should be partly allowed and the matter may be remitted back to the Assessing Officer to take a fresh decision on merits.

5. Having regard to the submissions made by the learned counsel on either side, following the Judgment dated 03.01.2019 made in TCA Nos. 339 to 341 of 2011,the finding rendered by the Tribunal is set aside and the matter is remitted back to the Assessing Officer to take to take a fresh decision on merits. The Tax Case Appeal partly allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Rj



To

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

2. The Commissioner of Income Tax,
(Appeals)-XII
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

3. The Deputy Commissioner of Income Tax,
Company Circle Ii(2), Chennai-600 034.

+1cc to Mr.M.Swaminathan, Advocate SR.No.15063

+1cc to M/s.Subbaraya Aiyar, Advocate SR.No.14397

T.C.A.No. 423 of 2012

GJ(CO)
GMY(15/04/2021)