IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

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

Tax Case Appeal Nos.1101 & 1102 of 2015

The Commissioner of Income Tax,
Chennai. ...Appellant in both TCAs

.vs.

M/s. Caterpillar India Pvt. Limited,
7th Floor, International Tech Park,
Chennai, Taramani Road,
Taramani, Chennai - 600 113. ...Respondent in both TCAs

Tax Case Appeals in T.C.A.Nos.1101 & 1102 of 2015 filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated05.02.2015, passed in I.T.A.Nos.1450/Mds/2014 and 933/Mds/2014 for the Assessment Years 2006-2007 and 2009-2010. Preferred against the order of the Income Tax Appellate Tribunal Madras "A" Bench dated 05/02/2015 made in ITA Nos.1450/mds/2014 and 933/mds/2014 for the Assessment years 2006-2007 and 2009-2010 respectively preferred against the order of the Commissioner of Income Tax(Appeals), Large Tax Payer Unit, II floor, 1775, Jawaharlal Nehru Inner Ring Road,Anna Nagar Western Extension, Chennai - 600 101 dated 14/02/2014 made in ITA No.26/2009-10/LTU(A) and 23/01/2014 made in ITA No.48/12-13/LTU (A)respectively preferred against the order of the Assistant Commissioner of Income Tax, Large Tax Payer Unit, Chennai dated 11/11/2009 and 15/02/2013 made in GIR/PAN No.AABCC4615K for the respective Assessment year of 2006-2007 and 2009-2010.

For Appellant in both TCAs : Mr.T. Ravi Kumar, Senior Standing Counsel

For Respondent in both TCAs : Mr.SP. Chidambaram

COMMON JUDGMENT

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

Challenging the common order passed in I.T.A.Nos.1450/Mds/2014 and 933/Mds/2014 in respect of the Assessment Years 2006-2007 and 2009-2010 on the file of the Income Tax Appellate Tribunal, Chennai "A" Bench, (for brevity, the Tribunal), the Revenue has filed the above appeals.

2. At the time of admission of the above appeals, the following substantial questions of law arose for consideration:

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that set off of brought forward losses of non eligible unit against the income of the eligible 10A unit is to be allowed"
>
> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that deduction under section 10A should be allowed without reducing the unabsorbed depreciation and brought forward losses of the non 10A unit?
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> (iii) Whether on the facts and in the circumstances of the case, the Tribunal is proper especially when section 10A(6)(ii) clearly states that brought forward losses if it pertains to the year subsequent to Assessment Year 2001-02 then the same is to be set off against the current year gains of business?
>
> (iv) Is not the finding of the Tribunal is bad especially when total income had been defined under section 2(45) wherein it refers to section 5 under which it is to be computed in the manner laid down in Income Tax Act and therefore set off of losses and unabsorbed depreciation are to be adjusted first?"

3. When the appeals are taken up for hearing, Mr.T. Ravi Kumar, learned Senior Standing Counsel appearing for the appellant, fairly submitted that the questions of law involved in the present appeals were decided against the review in the Judgment of the Hon'ble Division Bench of this Court dated 18.03.2020 in T.C.A. No 228 of 2011 [M/s. Comstar Automative

Technologies Private Ltd., Maraimalai Nagar, Chengalpattu District - v. The Deputy Commissioner of Income Tax Company Circle - I (3), Chennai], wherein the Hon'ble Division Bench held as follows:-

> " .... 26. In the aforesaid Judgment, the reason for such conclusion arrived at by the Hon'ble Apex Court has been explained at para 17 in unequivocal terms. The Apex Court has specifically held that, at the stage of the aggregate of the incomes under other heads, the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be a premature for application. The deduction under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the Assessee from the gross total income. Ultimately, the issue has been settled with the following words of the Hon'ble Apex Court in the said decision "the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI."
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> 27. Therefore the law has been settled by the said decision of the Hon'ble Apex Court, where in clear terms, it has been held that, the deductions either under Section 10A or 10B would be made while computing the gross total income of the eligible undertaking (like the Assessee) under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI of the Act.
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> 28. Here in the case in hand, the total income was first arrived at by the Revenue through the Assessing Officer in the Assessment Order by computing the total income by way of brought forward or carry forward the depreciation allowance of the earlier Assessment Years and set off the unabsorbed depreciation first and making the return Nil, thereby leaving the Assessee in a position where it could not claim any deduction under Section 10B as there was no income after set off of carry forward depreciation and unabsorbed depreciation from earlier years.
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> 29. This method of computing the income in the present case made by the Revenue is totally against the said law as has been declared by the Hon'ble Apex

Court in the aforesaid decision in Commissioner of Income-tax v. Yokogawa India Ltd., (cited supra).

30. Therefore we have no hesitation to hold that, the decision of the ITAT, which is impugned herein, would not stand in the legal scrutiny, in view of the law having been declared by the Hon'ble Apex Court. Therefore, we are of the view that, the Substantial Question of Law raised in this Appeal is covered by the said decision, therefore it can be answered accordingly.

31. In the result, the Appeal is allowed and the Substantial Question of Law raised in this Appeal is answered in favour of the Assessee and against the Revenue. There shall be however no order as to costs."

4. Mr.SP.Chidambaram, learned counsel appearing for the respondent submitted that following the ratio laid down by the Hon'ble Division Bench of this court cited supra, the questions of law may be decided against the revenue and the appeals may be dismissed.

5. In view of the submissions made by the learned counsel on either side, following the ratio laid down by the Hon' ble Division Bench of this Court dated 18.03.2020 made in T.C.A.No.228 of 2011 cited supra, the questions of law are decided against the revenue and in favour of the assessee. The Tax Case Appeals are liable to be dismissed. Accordingly, the same are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

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

2. The Commissioner of Income Tax(Appeals),
Large Tax Payer Unit,
II Floor, 1775 Jawaharlal Nehru Inner Ring Road,
Anna Nagar,
Western Extension,
Chennai - 101.

3. The Assistant Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai.

+2cc to Mr. T.Ravikumar,Advocate, S.R.No. 21760,21551 of 01/04/2021

Tax Case Appeal Nos.1101 & 1102 of 2015

GSM(CO)
RN(10/05/2021)