IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.836 of 2015

Commissioner of Income Tax,
Chennai. ...Appellant

Vs

M/s.Sundaram Clayton Ltd.,
Jayalakshmi Estates,
No.29, Haddows Road,
Nungambakkam,
Chennai - 600 006.
[PAN: AAACS4920J] ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 22.01.2015 made in ITA.No.2611/Mds/2014 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai for the assessment year 2007-2008.

Against the order of the Commissioner of Income Tax Appeals VI, Chennai-34 dated 30.07.2014 in I.T.A. No. 1739/2013-2014 A-VI in the assessment year 2007-2008.

Against the order of the Assistant Commissioner of Income Tax, Company Circle VI(4) Chennai dated 27.01.2014 PAN AAACS4920J in the Assessment year 2007-2008.

For Appellant : Mr.J.Narayansasamy
For Respondent: Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

The appeal has been filed by the revenue under Section 260A of the Income Tax Act ['the Act' for brevity] against the order passed by the Income Tax Appellate Tribunal [hereinafter referred to as "the Tribunal"], 'C' Bench, Chennai in I.T.A.No.2611/Mds/2014 dated 22.01.2015 for the assessment year 2007-2008.

2.The appeal was admitted on 28.09.2015 to decide the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in directing the Assessing Officer to accept the disallowance arrived by the assessee since the disallowance of 2% of the dividend income as expenditure was approved by the jurisdictional court? and

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the computation of expenditure cannot be made by applying Rule 8D for the purpose of arriving at the eligible exemption of dividend income by invoking the provisions of Section 14A for the present assessment year?"

3.We have elaborately heard Mr.J.Narayanasamy, learned senior standing counsel appearing for the appellant/revenue and Mr.R.Vijayaraghavan, learned counsel appearing for the respondent/assessee.

4.The question involved in the instant case is with regard to the disallowance to be made under Section 14A of the Act. The present round of litigation is the second round as the earlier round of litigation which travelled up to the Tribunal, the Tribunal allowed the appeal and remanded the matter for fresh consideration. Pursuant to which, an order was passed by the Assessing Officer fixing the disallowance under Section 14A at Rs.3,96,16,351/-. Aggrieved by the same, the assessee preffered an appeal before the Commissioner of Income Tax [Appeals]-VI [CIT(A)], Chennai, who by order dated 30.07.2014 allowed the appeal filed by the assessee on this issue by holding that the Assessing Officer while making the disallowance under Section 14A of the Act has omitted to reduce the disallowance under Section 14A of the Act already made as per the earlier assessment order. In view of the same, the Assessing Officer was directed to re-compute the correct disallowance. So far as the quantum of disallowance is concerned, the CIT(A) fixed at Rs.40,53,203/- as against Rs.3,96,16,351/- adopted by the Assessing Officer. The reasons have been given by the CIT(A) for arriving at such a conclusion which we find to be cogent and after taking note of all the factual issues. The revenue challenged the said order before the Tribunal and the Tribunal took note of the decision in the case of M/s.Simpson & Co. Ltd., vs. DCIT [T.C.A.No.2621 of 2006 dated 15.10.2012] and restricted the disallowance at Rs.33,56,354/- which was disallowed by the assessee himself. The revenue is before us challenging the correctness of the said order.

5.With regard to the percentage of disallowance which can be fixed prior to the amendment, was considered in several decisions. One such decision is in the case of EID Parry vs. The Assistant Commissioner of Income Tax, Chennai [T.C.A.No.2511 of 2006 dated 30.10.2012] which was followed by the Hon'ble Division Bench in the case of the Commissioner of Income Tax vs. M/s.Tube Investments of India Ltd., [T.C.A.No.524 of 2007 dated 17.12.2014]. The operative portion of the judgment reads as follows:

> "8.It is brought to the notice of this Court that the 2^{nd} question of law has also been decided against the Revenue by this Court in the decision reported in EID Parry - vs- The Asst. Commissioner of Income Tax, Chennai [T.C.(A).No.2511/06 dated 30.12.2012]. In the said judgment, this Court considered two questions of law as under:
>
> > (i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the estimate of expenses at 2% deemed to have been incurred in respect of dividend income, when no such expenses were incurred?
> >
> > (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the addition of the estimate expenses at the rate of 2% on dividend income while computing book profits, when no such expenses were incurred?
>
> and answered the same as under:
>
> > "2.As far as first and second questions of law are concerned, learned counsel for the assessee fairly submits that the same is covered against the assessee by reason of decision of this Court renderd in assessee's own case in T.C.No.2287 of 2006 dated 08.08.2012. Accordingly, the above two questions of law are answered against the assessee."
>
> The said judgment squarely applies to the facts of the present case and, the 2^{nd} question of law is answered accordingly."

6.Thus, we find that the Tribunal had followed the decision of the jurisdictional High Court and fixed the disallowance at Rs.33,56,354/- which was already disallowed by the assessee. Therefore, we find that there is no question of law, much less the substantial question of law arisen for consideration in this appeal. Accordingly, the tax case appeal is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cse
To

1. The Assistant Commissioner
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar
'C' Bench, Chennai-90.

2.The Commissioner of Income Tax Appeals-VI
No. 121 Mahathma Gandhi Road
Chennai 34.

3.The Assistant Commissioner of Income Tax
Company Circle VI(4)
Nungambakkam , Chennai 34.

+1 CC to M/s. Subbaraya Aiyar, Advocate sr 39623.

TCA.No.836 of 2015

MG(CO)
SP(02/09/2021)