IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. No.426 of 2021

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

Vs.

M/s.Redington India Ltd.,
95, Mount Road, SPL Guindy House,
Guindy, Chennai – 600 032. ... Respondent/Appellant

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 18.10.2016 in I.T.A.No.1155/Mds/2016, Assessment Year 2011-12.

Against the order of Deputy Commissioner of Income Tax, Corp. Circle 5(1) Chennai-34, in PAN AABCR0347P dated 29.02.2016 against the order of Deputy Commissioner of Income Tax Transfer Pricing Officer - 2(2) (1/c) Chennai in F.No. R-501/TPO/2(2) A-Y-2011-2012 dated 28.01.2015.

For Appellant : Mr.T.Ravi Kumar
Senior Standing Counsel

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

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity), is directed against the order, dated 18.10.2016, passed by the Income Tax Appellate Tribunal, Chennai "D" Bench, in I.T.A.Nos.1155/Mds/2016, for the Assessment Year 2011-12.

2. The Revenue has raised the following substantial questions of law for consideration.

"1.Is not the finding of the Tribunal perverse by allowing the claim of trademark, license fee paid by the Assessee to its Associate Enterprise when the facts remains that the Associate Enterprise is not the registered owner of the trademarked?

2.Whether the Tribunal was right in not considering the fact that the Assessee had been using the trademark from 1993 whereas the Associate Enterprise was formed only in the year 2005?

3.Whether the reasoning and finding of the Tribunal that the investment made in the subsidiary company should be excluded while calculating disallowance under Rule 8D(2) read with Sec.14A especially when no such exception is provided under the Statute?

4.Whether the Tribunal ought to have applied the decision of the Apex Court in the case of Maxopp Limited which clearly held that Sec.14A disallowance is to be made on investment made in the subsidiary company?"

3. We have heard Mr.T.Ravi Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Vijayaraghavan, learned counsel appearing for the respondent/assessee.

4. We need not labour much to take a decision or answer the substantial questions of law framed for consideration on account of the following events:

The Tribunal, by the impugned order dated 18.10.2016, disposed of two appeals, viz., I.T.A.No.1155/Mds/2016 (impugned in this appeal) filed by the respondent/assessee and I.T.A.No.1145/Mds/2016 filed by the Revenue. As against the order in I.T.A.No.1145/Mds/2016, the Revenue had filed an appeal before this Court in T.C.A.No.323 of 2021, which was disposed of by the Division Bench of this Court on 21.06.2021 on the ground that the assessee has availed the benefit of Vivad se Vishwas Scheme. To be noted that the assessee has paid the entire tax and Form-3 was filed under the said Act on 15.04.2021, which has been received by the Department. The present appeal by the Revenue is against the order, dated 18.10.2016, in I.T.A.No.1155/Mds/2016, which was an appeal filed by the assessee and allowed by the Tribunal and against which, the Revenue are before us.

5.Since the assessee has already filed Form-3 declaration and paid the entire tax, the appellant Department/competent authority is directed to proceed to consider the Form-3 declaration in terms of the provisions of the Direct Tax Vivad se Vishwas Act, 2020 (Act 3 of 2020), read with Direct Tax Vivad se Vishwas Rules, 2020. We make the position clear that the assessee should not be put in a worse off position because we have entertained this appeal after condoning the delay. We have done so because the assessee should be able to get comprehensive relief and the competent authority under the Act should be able to process the Form-3 declaration filed by the assessee.

6.With these observations, the Tax Case Appeal stands disposed of and the substantial questions of law are left open for consideration. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax,
Chennai.

3.The Deputy Commissioner of Income Tax,
Corp. Circle 5(1), Chennai-34.

4.The Deputy Commissioner of Income Tax
Transfer Pricing Officer - 2(2) (1/c),
Chennai.

+1cc to Mr.Subbaraya Aiyar Padmanaban, Sr No.38287
+1cc to Mr.T.Ravikumar, Sr No.37914

Tax Case Appeal No.426 of 2021

PVS (CO)
PR (26/08/2021)