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

T.C.A.No.135 of 2016

M/s.Poppys Knitwear P. Ltd.,
33, M.P.Nagar,
Tirupur-641 607. ..Appellant

-vs-

The Commissioner of Income Tax,
Ward I(2), Tirupur. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 28.01.2009 made in I.T.A.No.1599/Mds/2007 on the file of the Income Tax Appellate Tribunal Bench 'A', Chennai for the assessment year 2004-05 against the appellate order of the Commissioner of Income Tax (Appeals)-II,Coimbatore dated 19.03.2007 and made in I.T.Appeal No.410C/2006-2007 the Assessment year 2004-2005 and against the Assessment order of the Income Tax officer, ward 1(2), Tirupur dated 29.12.2006 and made in PAN/GIR No.AADFP4476C, GIR NO.A23292 for the Assessment year 2004-2005.

For Appellant : Mr.R.Kumar

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

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

This appeal, by the appellant/assessee, filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 28.01.2009, made in I.T.A.No.1599/Mds/2007 on the file of the Income Tax Appellate Tribunal Bench 'A', Chennai for the assessment year 2004-05.

2.The appeal was admitted on 22.02.2016, on the following substantial questions of law:-

"(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that deduction under Section 80HHC in the case of MAT assessment is to be worked out on the basis of profit computed under regular provisions of law applicable to computation of profit and gains of business or profession? and

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that in computing book profit under Section 115JB of the Act, the deduction under Section 80HHC should be limited to 30% of profit from export business, as provided under Section 80HHC(1B)?"

3.Heard Mr.R.Kumar, learned counsel for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the respondent/Revenue.

4.It is not disputed before us that the substantial questions of law, which have been framed for consideration, have been answered against the Revenue by the Hon'ble Supreme Court in the case of Ajanta Pharma Ltd. vs. Commissioner of Income-Tax [(2010) 327 ITR 305 (SC)]. The said decision was followed by a Division Bench of this Court in the case of CIT vs. M/s.Bannari Amman Sugars Ltd., [T.C.(A) No.163 of 2009 dated 30.07.2018], to which one of us (TSSJ) was a party. The operative portion of the judgment reads as follows:-

"4. The Tribunal decided the matter in favour of the assessee and in doing so, relied upon the decision of the Special Bench of the Mumbai Tribunal in the case of DCIT v. Syncome Formulations (I) Ltd. and others reported in 292 ITR 144 (AT) wherein, it was held that computation has to be done under the book profits and not under the normal computation.

5. The legal issue was considered by the Hon'ble Supreme Court in the case of Ajanta Pharma Ltd. v. Commissioner of Income Tax reported in 2010(327) ITR 0305 and it was held that clause (iv) of Explanation to Section 115 JB covers full export profits of 100% as "eligible profits" and the same cannot be reduced to 80% by relying on section 80 HHC(1B) and the argument of the Department that both "eligibility" as well as "deductibility" of the profit have to be considered together for working out the deduction as mentioned in clause (iv) of Explanation to Section 115JB is devoid of merits.

6. Thus, the decision of the Hon'ble Supreme Court in Ajanta Pharma Ltd. (cited supra) applies to the case on hand, as identical question has been framed for consideration. Further, we note that the decision of the said fact in Syncome Formulations (I) Ltd. (cited supra) was considered by the Hon'ble Supreme Court along with other decisions and the decision of the Tribunal was confirmed in the case of Commissioner of Income Tax v. Bhari informations Technology System (P) Limited reported in 2012 (340) ITR 0593.

7. In the light of the aforesaid decisions, the substantial questions of law, which have been framed for consideration is answered against the Revenue. Accordingly the Tax Case Appeal stands dismissed. No costs."

5.Thus, by applying the above decisions, this appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax,Ward I(2), Tirupur.

3. The Commissioner of Income Tax (Appeals)-II, Coimbatore.

4. The Income-Tax Officer, Ward-1(2), Tirupur.

+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.39503

T.C.A.No.135 of 2016

PA(CO)
RGA(31/08/2021)