IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.258 of 2018

M/s.Sundaram Clayton Ltd.,
No.29, Haddows Road,
Chennai - 600 006. ...Appellant

Vs

The Additional Commissioner of
Income Tax,
Company Range-VI,
Chennai - 34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.04.2016 made in ITA.No.1431/Mds/2013 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2009-10, against the order of the Commissioner of Income Tax (Appeals), dated 28.03.2013 for the Assessment Yea 2009-2010 against the Additional Commissioner of Income Tax, company circle VI(4) and Joint Commissioner of Income Tax, Company Range (VI), Chennai respectively for the Assessment Year 2009-10 dated 29.03.2011 and 28.12.2011.

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

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

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

This appeal, filed by the assessee, is directed against the order dated 13.04.2016 made in ITA.No.1431/Mds/2013 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2009-10.

2. The appeal was admitted on 03.04.2018 on the following substantial question of law:

> "Whether loss on account of cancellation of an export contract is an allowable business loss and if so, whether the loss is to be restricted to the total export turnover in terms of that export contract?"

3. We have heard Mr.R.Vijayaraghavan, appearing for Mr.Subbaraya Aiyar Padmanabhan, learned counsel for the appellant and Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the respondent-Revenue.

4. The assessee is not largely aggrieved by the remand of the matter to the Tribunal, but expressed serious reservation and grievances against that part of the order passed by the Tribunal restricting the scope of remand.

5. The learned counsel for the appellant submitted that the Tribunal ought not to have restricted the remand by observing that the Assessing Officer should consider the derivative transaction equivalent to the total export turnover and also to ignore the loss on account of premature cancellation/termination before the due date of maturity of the transaction undertaken by the assessee. In support of this contention, the learned counsel placed reliance on the following decisions:-

a) CIT Vs Badridas Gauridu (P) Ltd. - 261 ITR 256 (Bom)

b) CIT Vs Vishindas Holaram - 229 Taxman 30 (Bom)

c) CIT Vs Friends & Friends - 217 Taxman 267 (Guj)

d) CIT Vs Panchammal Steels - 215 Taxman 140 (Guj)

e) CIT Vs Woodward Governor India (P) Ltd - 312 ITR 254 (SC)

f) CIT Vs Celebrity Fashion Ltd. - TCA.26 of 2018

6. In the light of the above decisions, we are of the considered view that the remand should not be restricted and to that extent, the order passed by the Tribunal has to be set aside and it should be modified and the remand should be by way of an open remand.

7. Accordingly, the Tax Case Appeal is allowed and the order passed by the Tribunal, more particularly in paragraph 11, is modified and the observations and restrictions placed by the Tribunal stand vacated and the matter is remitted back to the Assessing Officer for a fresh consideration in accordance with law. The authorized representative of the assessee shall be afforded an opportunity to place all materials and decisions which they seek to rely upon. Consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

hvk

To

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

2. The Additional Commissioner of
   Income Tax,
   Company Range-VI,
   Chennai - 34.

3. The Commissioner of Income Tax (Appeals)-V,
   Chennai-34.

4. The Assistant Commissioner of Income Tax,
   Company Range-VI(4), Chenna-34.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.8930.
+1cc to Mr.J.Narayanasamy, Advocate, S.R.No.8627.

SS(CO)
CSR 31.03.2021