IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

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THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R. HEMALATHA

Tax Case Appeal Nos.601 and 602 of 2016

M/s.Sanmar Speciality Chemicals Ltd.,
No.9, Cathedral Road,
Chennai - 600 086. ... Appellant in all appeals

Vs.

The Deputy Commissioner of Income Tax,
Corporate Circle - 6(1),
Chennai - 600 034. ... Respondent in all appeals

Tax Case Appeals in Tax Case Appeal Nos.601 and 602 of 2016 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 18.12.2015 passed in I.T.A.Nos.1523/Mds/2015 and 1524/Mds/2015 for the Assessment years 2009-2010 and 2011-2012, made against the order of the commissioner of Income Tax (Appeals)-15, chennai-34, in ITA No.326/CIT(A)-15/2013-2014 dated 30.03.2015 for the Assesment year 2009-2010 and ITA No.572/CIT(A)-2013-2014 dated 30.03.2015 for the Assessment year 2011-2012, made against the order of the Assistant Commissioner of Income Tax, Company Circle VI(1), Chennai-34, Vide Assessment Order dated 23.12.2011 for the Assessment year 2009-2010/PAN AABCS0201P, and order of the Deputy commissioner of Income Tax, company circle VI(1), Chennai vide Assessment order dated 29.01.2014 for the Assessment year 2011-2012/PAN/GIR NO. AABCS0201P.

For Appellant : Mr.R.Venkat Narayanan
for M/s.Subbaraya Aiyar Padmanabhan
in all appeals

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel
in all appeals

COMMON JUDGMENT
(Delivered by M.DURAISWAMY, J.)

T.C.A.No.601 of 2016 arises against the order passed in I.T.A.No.1523/Mds/2015 in respect of the Assessment Year 2009-10 on the file of the Income Tax Appellate Tribunal, Madras "A" Bench. T.C.A.No.602 of 2016 arises against the order passed in I.T.A.No.1524/Mds/2015 in respect of the Assessment Year 2011-12 on the file of the Income Tax Appellate Tribunal, Madras "A" Bench. Challenging the order passed by the Tribunal, the assessee has filed the above appeals.

2.For the Assessment Years 2009-10 and 2011-12, the assessee filed the return of income admitting the return loss. The return was processed under Section 143(1) of the Income Tax Act and the case was selected for scrutiny and notice under Section 143(2) was issued and subsequently, the notice under Section 142(1) was also issued. While completing the assessment, the Assessing Officer disallowed the provision for gratuity claimed by the assessee under Section 40A(7)(b) of the Income Tax Act. According to the Assessing Officer, the gratuity payment is covered under Section 43B(b) of the Act as per which the payment made during the year is eligible and the provisions made towards the items mentioned in the section are not allowable deductions. The Assessing Officer negatived the claim of the assessee since it has not made the actual payment and disallowed the provision made towards gratuity and added the same to the total income.

3.Aggrieved by the order passed by the Assessing Officer, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) and the Appellate Authority allowed the appeals. Challenging the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal, by the impugned orders, remitted the matter back to the Assessing Officer to decide the matter afresh.

4.Aggrieved over the order passed by the Income Tax Appellate Tribunal, the assessee has filed the above appeals.

5.The above appeals were admitted on the following substantial questions of law :

T.C.A.No.601 of 2016 :

"1.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the provision of Rs.27,62,021/- made by the assessee towards the approved gratuity fund with LIC of India and approved by the Commissioner of Income Tax is not an allowable deduction under Section 40(A)(7)(b) of the Act?

2.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that notwithstanding the allowability of provision made for gratuity under Section 40A(7), the actual payment of the amount to the Trust has to be effected before the same can be allowed ?

3.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the provisions of Section 43B(b) overrides the provisions of Sec.40A(7)(b) of the Act?"

T.C.A.No.602 of 2016 :

"1.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the provision of Rs.55,07,763/- made by the assessee towards the approved gratuity fund with LIC of India and approved by the Commissioner of Income Tax is not an allowable deduction under Section 40(A)(7)(b) of the Act?

2.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that notwithstanding the allowability of provision made for gratuity under Section 40A(7), the actual payment of the amount to the Trust has to be effected before the same can be allowed ?

3.Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the provisions of Section 43B(b) overrides the provisions of Sec.40A(7)(b) of the Act?"

6.When the appeals are taken up for hearing, Mr.R.Venkat Narayanan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the appellant, submitted that the authority had already passed an order dated 31.03.2017 in favour of the appellant/assessee, and hence, the above appeals have become infructuous.

7.In view of the submission made by the learned counsel for the appellant, the above Tax Case Appeals are dismissed as infructuous. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Deputy Commissioner of Income Tax,
Corporate Circle - 6(1),
Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals)-15,
Chennai-34.

4.The Assistant Commissioner of Income Tax,
Company circle VI(1), Chennai-34.

T.C.A. Nos.601 and 602 of 2016

AK-II(CO)
SB(18/08/2021)