IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

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

TAX CASE APPEAL NOS.678 AND 679 OF 2016

M/s.Ravikumar Distilleries Ltd.,
No.17, Kamaraj Salai,
Pondicherry - 605 011. ... Appellant in all appeals

.Vs.

The Assistant Commissioner of Income Tax,
Circle - 1,
Pondicherry. ... Respondent in all appeals

Tax Case Appeals in Tax Case Appeal Nos.678 and 679 of 2016 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "C" Bench, dated 20.11.2015 passed in I.T.A.Nos.1578/Mds/2014 and 1579/Mds/2014 respectively for the Assessment years 2007-08 and 2010-11 respectively.

As against the Order of the Commissioner of Income Tax (Appeals)VI, Chennai in ITA.No.699/13-14, dated 25.03.2014 and ITA.No.706/13-14 dated 27.03.2014 and against the order of the Assistant Commissioner of Income Tax Circle-I, Pondicherry dated 31.01.2013 and 11.03.2013 respectively in PAN.No/G.I.NO.AABCR4195D/1-R for the Assessment Years 2007-2008 and 2010 - 2011 respectively.

For Appellant : Ms.Sri Niranjani Srinivasan
for Mr.Philip George
in both appeals

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

C O M M O N J U D G M E N T
(Delivered by M.DURAISWAMY, J.)

The above appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 20.11.2015 passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, ('the Tribunal' for brevity) in I.T.A.Nos.1578/Mds/2014 and 1579/Mds/2014 for the assessment years 2007-08 and 2010-11 respectively. The appellant/assessee has raised the following substantial questions of law in the above appeals:

> "1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the disallowance u/s.40(a)(ia) of the Income Tax Act, 1961 in respect of reimbursement of expenditure, being Operational support cost to supporting manufacturers?
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> 2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the composite payment which includes Operational support cost and Royalty should be treated as Royalty and mandates that the deduction of Tax at Source should have been made on the entire payment?
>
> 3.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that deduction of Tax at Source should have been made on the entire composite payment consisting of Operational support cost and Royalty?
>
> 4.Whether on the facts and in the circumstances of the case, as per the terms of tie-up agreement, reimbursement of expenditure being Operational support cost to supporting manufacturers, falls outside the purview of Section 30 to 38 of Income Tax Act, 1961 and provisions of deduction of Tax at source are not applicable to warrant disallowance u/s.40(a)(ia) of Income Tax Act, 1961?"

2. We have heard Ms.Sri Niranjani Srinivasan for Mr.Philip George, learned counsel appearing for the appellant/ assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondent/Revenue.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters

connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 20.01.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the above appeals.

5. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping these appeals pending. At the same time, the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the assessee, is to be safeguarded. Accordingly, the Tax Case Appeals stand dismissed as withdrawn on the ground that the assessee has already been issued with Form-3 and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore these appeals in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of these appeals and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

6. With this observation, these Tax Case Appeals stand dismissed as withdrawn with the aforementioned liberty, and consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax (Appeals)VI,
   Chennai.

3. The Assistant Commissioner of Income Tax,
   Circle – 1, Pondicherry.

+1cc to Mr.M.P.Senthil Kumar, Advocate, S.R.No.36714

Tax Case Appeal Nos.678 and 679 of 2016

AJS(CO)
CS/19/08/2021