IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

TAX CASE APPEAL NO.432 OF 2018

Principal Commissioner of Income Tax 1,
No.63, Race Course Road, Coimbatore. ...Appellant

Vs

M/s.Sakthi Sugars Ltd.,
180, Race Course Road,
Coimbatore - 641 018. ...Respondent

Prayer:- APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 25.01.2018 made in ITA.No.1547/Mds/2017 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench, for the assessment year 2009-10.

Against the Order of the Commissioner of Income Tax (Appeals) I, Coimbatore in Appeal No.97/15-16 dated 24.04.2017 for the assessment year 2009-10 against the Assessment order Deputy Commissioner of Income Tax Corporate Circle-I, Coimbatore, dated 19.03.2015 in PAN/GIR.No.AADC50651B.

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

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

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

This appeal, filed by the Revenue, is directed against the order dated 25.01.2018 made in ITA.No.1547/Mds/2017 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench ('the Tribunal' for brevity) for the assessment year 2009-10.

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

> "1. Whether the ITAT is justified in holding that the assessee is eligible for depreciation on the notional loss without appreciating that the loss on the exchange fluctuation of FCCB is mere notional and not real loss?

2. Whether the Appellate Tribunal is correct in ignoring the decision of the Hon'ble Supreme Court in the case of M/s Woodward Governor India Pvt Ltd (2009) 179 Taxman 326 (SC) wherein it was clearly laid out that under amended Section 43A with effect from 01.04.2003 such actual payment of the decreased/enhanced liability is made a condition precedent for making adjustment in the carrying amount of the fixed asset?"

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant-Revenue and Mr.R.Vijayaraghavan, appearing for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the respondent/assessee.

4. The learned counsel for the respondent/assessee submits that the respondent/assessee has already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The assessee is given liberty to restore this appeal 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 the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Principal Commissioner of Income Tax 1,
   No.63, Race Course Road,
   Coimbatore.

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

4. The Deputy Commissioner of Income Tax
   Corporate Circle - I, Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.10835
+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.11090

TCA.No.432 of 2018

JP(CO)
CS/19/03/2021