IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM :

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

Tax Case Appeal No.498 of 2018

M/s.Sundaram Fasteners Ltd.,
98-A, 7th Floor,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ...Appellant

Vs

The Additional Commissioner of
Income Tax,
Company Range-VI,
Chennai - 600 034. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.09.2016 made in ITA.No.591/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2006-07, appeal against the order date 23.12.2011 made in ITA.No.320/10-11 on the file of the Commissioner of Income Tax (Appeals-IV), Chennai-34, for the Assessment year 200-07.

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

For Respondent : Mr.J.Narayanasamy, SSC

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

This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order dated 30.09.2016 made in ITA.No.591/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2009-10.

2. The appeal was admitted on 22.01.2019 to decide the following substantial question of law:

"Whether Tribunal ought to have granted depreciation under Section 32 on the amount paid to SEZ as it had acquired commercial right for the use of the land for the purpose of business of the Assessee?"

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

4. After elaborately hearing the submissions on either side and noting the substantial question of law on which the appeal was entertained, we find that this issue was not canvassed by the assessee before the Assessing Officer or the CIT(A) or for that matter at Tribunal and this is being raised as an alternate plea by the assessee. In fact, initially, the assessee had raised two substantial questions of law and the question on which this appeal was admitted was the 2nd question of law. So far as the 1st question of law was whether the Tribunal was right in law in holding that the upfront amount of Rs.5,96,80,000/- paid to Mahindra World city in consideration for the grant of use of land is not deductible as revenue expenditure under Section 37 of the Act.

5. The said issue was considered at the time of admission and by assigning reasons, the same was rejected and the appeal was admitted only on the aforementioned question of law.

6. The learned counsel for the appellant would place reliance on the decision of the Division Bench of this Court, to which one of us (TSSJ) was a party, in the case of Commissioner of Income Tax Vs. Tamilnadu Road Development Company Ltd. in T.C.A.Nos.220 to 225 of 2018, dated 19.01.2021.

7. Per contra, the learned Senior Standing Counsel for the respondent would place reliance on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Alps Theatre [(1967) 65 ITR 377].

8. In the considered view of this Court, these decisions cannot be looked into at this juncture, since foundational facts, though appear to have been on record, have not been canvassed by the assessee in the right form before the Assessing Officer to enable the Assessing Officer to take a decision in the matter. Nevertheless, this Court, having been satisfied that a issue arises for consideration in the assessee's case, is of the view that the matter should be remanded back to the Assessing Officer for a decision to be taken on merits. Therefore, while upholding the order passed by the Tribunal to

the extent indicated, insofar as the factual issue touching upon the question, which was framed for consideration, the matter stands remitted to the Assessing Officer for a decision to be taken on merits and in accordance with law, after taking note of the submissions that the assessee may make before the Assessing Officer.

9. In the result, the Tax Case Appeal is allowed to the extent indicated and matter stands remanded to the Assessing Officer and consequently, the substantial question of law is left open. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Additional Commissioner of Income Tax,
   Company Range-VI,
   Chennai - 600 034.

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

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.16596.

TCA.No.498 of 2018

LN(CO)
CSR 19.04.2021