IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM

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

Tax Case Appeal No.1023 of 2014

The Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Tractor and Farm Equipment Ltd.,
35, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. ... Respondent

PRAYER : Tax case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 25.05.2012 passed in I.T.A.No.607/Mds/2012 for the assessment year 2002-03. and

Preferred against the order of the Office of the Commissioner of Income Tax (Appeals)-III, No.121, Mahatma Gandhi Road, Chennai 600 034, ITA.No.827/10-11/A.III, dated 30.12.2011 G.I.No./PAN.No.AAACT2761Q, Year of the assessment 2003-2004 and Date of order 30.12.2011. and

Against the order of the Office of the Commissioner of Income Tax (Appeals)-III, No.121, Mahatma Gandhi Road, Chennai 600 034, ITA.No.697/09-10/A.III, Dated 30.12.2011, G.I.No/PAN.No.AAACT2761Q, Year of the Assessment 2002-2003 and date of order 30.12.2011. and

Against the Order of the Office of the Assistant Commissioner of Income Tax, Company Cirlce III (2), Chennai - 34, GIR No./PAN.AAACT2761Q, Status Company, Assessment Year 31.03.2003 and date of Assessment order: 31.12.2010. and

Against the Order of the Office of the Deputy Commissioner of Income Tax, Company Circle III (2), Chennai 600 034, GIR.No/PAN AAACT2761Q, status: Company, Assessment Year 2002-2003 and Date of Assessment Order 29 December 2009.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel
assisted by Ms.V.Pushpa,
Standing Counsel

For Respondent: Mr.Vikram Vijayaraghavan

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

Challenging the order passed in I.T.A.No.607/Mds/2012 in respect of the assessment year 2002-03 on the file of the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai, the Revenue has filed the above appeal.

2.It is the case of the appellant - Revenue that the assessee - Company filed its return of income on 31.10.2002 declaring an income of Rs.26,16,02,820/- and the return was processed under Section 143 (1) on 27.06.2003. Thereafter, notice under Section 148 dated 18.03.2009 was served on the assessee and the assessee filed a letter stating that the original return filed may be treated as one in response to the notice issued under Section 148. Thereafter, notice under Section 143(2) dated 26.08.2009 was served on the assessee and based on the particulars filed by the assessee, the assessment was finalized. The Assessing Officer found that the assessee had debited an amount of Rs.2,30,30,088/- towards Entry Fee under the head Miscellaneous Charges in the Profit and Loss account and therefore, explanation was sought from the assessee as to why it was debited as Entry Fee since the entry tax was adjustable only from sales tax and will not form part of expenditure debited to Profit and Loss account. Further, the assessee has not accounted for sales tax collected and paid through the Profit and Loss account. The assessee has paid tax on receipt of raw material, component, parts and inputs within the State of Karnataka and outside the State. There is no provision to adjust the entry tax paid under Section 3(1) against the payment of tax made under Karnataka Salex Tax Act for any final product. Therefore, the payment of entry tax, receipt of raw material, etc., which are used in the manufacture of an intermediate or finished product has to be charged to the Profit and Loss account. Entry tax is payable under Section 4B(1) on purchase value of motor vehicles at the time of entry of such vehicles in the local area for use or sale which is liable for registration. After considering the explanation of the assessee, the Assessing Officer held that the assessee's claim of entry tax in the Profit and Loss account is to be disallowed and added back to the total income. Aggrieved over the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and the Appellate Authority allowed the appeal following the decision rendered in the case of TVS motors Limited for the assessment year 2003-04. Aggrieved over the same, the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal also confirmed the order of the CIT (Appeals) and dismissed the appeal. Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

3.The above appeal was admitted on the following substantial questions of law:

"1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of CIT(A) who deleted the disallowance of entry tax on raw materials and the inputs that are brought into assessee factory at Bangalore for manufacture of Tractors?

2)Whether the finding of the Tribunal is proper especially when the assessee has debited an amount of Rs.2,30,30,088/- towards entry fees against the miscellaneous charges in the Profit and Loss account?"

4.Heard Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant - Revenue and Mr.Vikram Vijayaraghavan, learned counsel appearing for the respondent - assessee.

5.When the appeal is taken up for hearing, Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant - Revenue fairly submitted that the questions of law that were framed in the above appeal at the time of admission were already decided against the Revenue by the Hon'ble Division Bench of this Court in Commissioner of Income Tax, Chennai Vs. TVS Motors Ltd., reported in [2014] 364 ITR 1 (Madras), wherein the Hon'ble Division Bench of this Court held as follows:

"...

33. On the question of deduction under Entry Tax, the Tribunal rightly considered the claim of the assessee for deduction of entry tax payment made by the assessee. The Assessing Officer admitted that the deduction on account of Entry Tax is allowable if the payment is actually made and admittedly, payment of entry tax has been made by the assessee; the entry tax paid would get the adjustment as against the Sales Tax liability, consequently, any deduction would amount to total deduction.

34. We do not agree with the said line of reasoning. The payment made on the entry tax demand and its adjustment against the Sales Tax assessment has nothing to do with deduction provision under the Income Tax Act on the entry tax paid. Consequently, we reject the Revenue's plea on double deduction. The provisions of Sales Tax Act and the Income Tax Act are on the different lines. The adjustment or the treatment given under the Sales Tax Act cannot be read in to the Income Tax Act and the only question is whether the entry tax actually paid by the assessee during the year under consideration is allowable as deduction or not. The Tribunal rightly allowed the deduction claimed by the assessee on account of tax payment made under Entry Tax Act.

Consequently, we reject the Revenue's appeal.
35. Insofar as T.C.(A). No. 173 of 2009 is concerned, the first question on the claim of foreign exchange fluctuation of forward contract is concerned, the matter stands remitted back to the Assessing Officer for de novo consideration to the extent as indicated above. The order of the Tribunal is set aside.
36. As regards the claim of 100% depreciation by the assessee on the temporary parking shed, the Revenue's appeal stands allowed.
37. In the result, T.C.(A).173 of 2009 stands partly allowed.
38. Insofar as T.C.(A). No. 174 of 2009 is concerned, as regards the first question on Research and Development under Section 35(1)(iv) of the Act, the same is held against the Revenue. So too the expenditure on replacement of dies and moulds, we hold that the expenditure falls under Section 31 of the Act and not under Section 37 of the Act. To that extent, the Tribunal's order stands modified.
39.As regards the Entry Tax under Section 43B of the Act, the question is answered against the Revenue. Consequently, the Tax Case (Appeal) No. 174 of 2009 stands dismissed. No costs."

6.Mr.Vikram Vijayaraghavan, the learned counsel appearing for the respondent - assessee submitted that in view of the ratio laid down by the Hon'ble Division Bench of this Court reported in [2014] 364 ITR 1 (Madras), cited supra, the questions of law may be decided against the Revenue and the appeal may be dismissed.

7.In view of the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Division Bench of this Court in the judgment in Commissioner of Income Tax, Chennai Vs. TVS Motors Ltd., reported in [2014] 364 ITR 1 (Madras), cited supra, the questions of law are decided against the Revenue and the Tax Case Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal,

Madras "A" Bench.

2.The Commissioner of Income Tax (Appeals)-III,
No.121, Mahatma Gandhi Road,
Chennai 600 034.

3.The Assistant Commissioner of Income Tax,
Company Circle III (2),
Chennai - 34.

4.The Deputy Commissioner of Income Tax,
Company Circle III (2),
Chennai 600 034.

+1cc to Mr.M.Swaminathan, Senior Standing Counsel, (Income tax Department) Advocate, S.R.No. 22930

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 22931

JP II(CO)
GN(16/08/2021)