IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

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THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal No.32 of 2017

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

Vs.

M/s.Redington (India) Ltd.,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai - 600 032. ... Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 26.06.2015 passed in I.T.A.No.1743/Mds/ 2011.

Against the order of the Assistant Commissioner of Income Tax Company circle V(3) Chennai 34 dated 30.09.11 PAN AABCR 034710 in the assessment year 2007-2008.

For Appellant : Mr.T.Ravi Kumar,
Senior Standing Counsel

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

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

This appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 26.06.2015 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1743/Mds/ 2011 for the Assessment Year 2007-08.

2.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 Tribunal was right in allowing the claim of the assessee in relation to trade mark, license fee paid to its Associate Enterprise especially when the AE were not the registered owner of the trade mark?

2)Is not the finding of the Tribunal bad in allowing the claim relating to trade marks especially when assessee has been using the same from 1993 onwards and the associated enterprises were formed only in the year 2005?

3)Whether the finding of the Tribunal is proper by deleting the additions made on account of corporate bank guarantee given by the assessee to its AEs on the ground that it is not an international taxation?

4)Is not the finding of the Tribunal perverse by holding that it is not an international transaction especially when Sec.92 B of the Income Tax Act had been amended by Finance Act, 2012 with effect from 01.04.2012 included guarantee as an international taxation?

5)Whether the Tribunal was right in holding that the depreciation on temporary structure is to be allowed at 100% when the same issue for the earlier year was decided at 10% only in the assessee's own case for the assessment year 2006-07 which is against the rule of consistency?"

3. We have heard Mr.T.Ravi Kumar, learned senior standing counsel for the appellant/ Revenue and Mr.R.Venkatanarayanan, learned Counsel for the respondent/assessee.

4. It may not be necessary for this Court to decide the Substantial Question 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.

5.We are informed by the learned counsel for the respondent/ assessee that the assessee has already filed the requisite Forms - 1 & 2 on 29.12.2020 under Section 4 of the Act.

6. 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 this appeal pending. At the same time, safeguarding 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. Accordingly, the Tax Case Appeal stands disposed of on the ground that the assessee has already filed the requisite Forms - 1 & 2 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 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 Division Bench for orders.

7. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal, Madras "D" Bench

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

3.The Commissioner of Income Tax,
Chennai.

4.The Section Officer,
AE Section,
High Court, Madras.

5.The Section Officer,
Judicial Section,
High Court, Madras.

+1 cc to Mr.Ravikumar, Advocate, S.R.No.19762
+1 cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.19730

MG(CO)
KM(16/04/2021)