IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

TAX CASE (APPEAL).NOS.725, 726 AND 727 OF 2009

The Commissioner of Income-Tax
Chennai III ...Appellant / Appellants in all Appeals

Vs

M/s.Sundaram Fasteners Ltd.,
98A, 7th floor, Dr.Radhakrishnan Salai
Mylapore,
Chennai-600 004 ...Respondent / Respondent in all Appeals

Prayer : Tax Case Appeals filed against the order of the Income-tax Appellate Tribunal "C" Bench Chennai dated 05.11.2008 in ITA.Nos.202, 203 and 204/Mds/2008 against order passed by the Commissioner of Income Tax (Appeals)-V, Chennai-34 made in ITA No.603 & 604/2006-2007, dated 17.10.2007 relating to the assessment year 1999-2000 & 2000-2001 and ITA No.165/2006-07 relating to the assessment year 2003-2004, dated 08.10.2007 and against the assessment order passed by the Deputy Commissioner of Income Tax, Company Circle VI(4), Chennai-34 made in PAN/GIR No.AAACS8779D/SU-49 dated 26.12.2006, for the assessment year 1999-2000 and 2000-2001 and the assessment order passed by the Assistant Commissioner, Income Tax Company Circle (4), Chennai-34, dated 31.03.2006 for the assessment year 2003-2004 respectively.

For Appellant in all Appeals : Mr.J.Narayanaswamy

For Respondent in all Appeals : Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar.

COMMON JUDGMENT

[Judgment of the Court was delivered by R. MAHADEVAN, J.]

These tax case appeals have been filed by the appellant / Revenue, challenging the order dated 05.11.2008 passed by the

Income Tax Appellate Tribunal, Chennai -C Bench, in I.TA.Nos.202, 203 and 204/Mds/2008, relating to the assessment years 1999-2000, 2000-01 and 2003-04.

2. By order dated 11.08.2009, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that interest under Section 234D was not leviable for the assessment year under consideration even though the regular assessment under Section 143(3) for the Assessment Year was completed on 31.03.2006 i.e., after Section 234D came into force without considering the Explanation to Section 234D"

3. Today, when the matters were taken up for consideration, the learned counsel for the appellant / Revenue as well as the respondent / assessee jointly submitted that the substantial question of law involved in these appeals has already been considered and decided in favour of the Revenue by judgment dated 19.03.2019 passed in TCA.Nos.1457 and 1458 of 2008, the relevant passage of which, is usefully extracted hereunder:

> "5.On the Second Question of Levy of Interest under section 234D of the Act on the excess refund made to the Assessee along with the Assessment intimation sent to him under section 143(1) of the Act, the learned senior standing counsel for the Revenue drew our attention to a judgment of this court in the case of Commissioner of Income Tax v. Fisher Sanmar Ltd, (2014) 361 ITR 296 (Mad), wherein, a Division Bench of this Court held that if the regular assessment of the Assessee is made after the amendment of provisions of Section 234D of the Act w.e.f. 01.06.2003, then, the provisions of Section 234D for levy of interest on the excess refund amount would become applicable, even though the assessment period may be prior to the said date of amendment.
>
> 9. As for the Question of Levy of Interest under Section 234D of the Act, though computation of interest will depend upon the appeal effect order to be passed, the quantum of net payment is to be determined accordingly, after allowing weighted deduction under Section 35 (2AB) of the Act, as indicated above. The provisions of Section 234D of the Act have been held applicable for Assessment Year 2003-2004 in question in terms of the decision of the Co-ordinate Bench of this Court in the case of Fisher Sanmar Ltd., cited

supra. Accordingly, Questions of Law Nos.3 and 4 are answered in favour of the Revenue and against the Assessee."

4. Following the aforesaid judgment, which applies to the facts of the present case, the substantial question of law is answered in favour of the Revenue and against the Assessee. Accordingly, these Appeals of the Revenue are allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

nvsri

To

1.The Commissioner of Income-Tax,
Chennai III.

2.The Income-tax Appellate Tribunal,
"C" Bench Chennai.

3.The Deputy Commissioner of Income Tax,
Company Circle VI(4), Mahatma Gandhi Road,
Chennai-34.

4.The Commissioner of Income-Tax (Appeals) -V,
121, Mahatma Gandhi Road,
Chennai-600 034.

5.The Assistant Commissioner of Income Tax,
Company Circle VI(4),
Chennai-34.

+1cc to M/s.Subbaraya Aiyar, Advocate Sr.No.4537

TC(A).Nos.725, 726 and 727 of 2009

BS(CO)
RVM(23/02/2022)