IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

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

T.C.A.Nos.172 and 173 of 2011

The Commissioner of Income Tax,
Business Circle X,
Chennai. .. Appellant/ Appellant

Versus

M/s.Abdul Wahib & Co.
No.26/53, Vepery High Road,
Periamet, Chennai-600 003. .. Respondent/Respondent

Appeals filed under Section 260 (A) of the the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai, dated 26.11.2010 in I.T.A.Nos.182/Mds/2010 and 183/Mds/2010 respectively and against the order of Income Tax, (Appeals) - IV, Chennai dated 16/12/2009 in Appeal No. CIT (A) - IV /CHE/2019/08-09 Assessment year 2002-2003, and against the order of the Assistant Commissioner of Income Tax, Circle X, Chennai 600 006 dated 28/03/2006, in PAN CIR AAAFT 0482 B.

For Appellant : Mr.R.Hemalatha
Standing Counsel

For Respondent : Mr.R.Sivaraman

COMMON JUDGMENT

(Judgment of the court was made by MOHAMMED SHAFFIQ, J.)

The short question that arises for consideration in these Tax Cases relates to the correctness of the levy of interest under Section 234B of the Act, which arises consequent to restriction of deduction under Section 80HHC in terms of the Vth proviso to Section 80-HHC(3) which was introduced by an amendment brought in the year 2005 with retrospective effect from 01.04.1992.

2. The above question stands answered against the Revenue in

relation to the very same assessee for the years 1998-99 and 1999-2000 by order dated 22.06.2010 in T.C.A.Nos.396 and 398 of 2010 wherein it was held by this Court that when the liability for payment of additional tax itself was created for the first time on the basis of amendment in the year 2005, with retrospective effect from 01.04.1992, it would be incongruous to expect the assessee to satisfy the requirement of payment of advance tax in terms of Section 234(B). It was further held that though the liability for additional tax by virtue of the amendment may be justified, however levy of interest for failure to pay advance tax in anticipation of such liability created on the basis of an amendment made subsequently cannot be justified/ countenanced. The following portion of the said order is relevant and extracted below:

> When the liability for payment of additional tax itself was created for the first time, based on the subsequent amendment, in the year 2005 with retrospective effect from 01.04.1992, it would be incongruent to expect the asses see to have satisfied the requirement of payment of advance tax as prescribed under Section 234(B) of the Income Tax Act. Therefore, while the liablity for additional tax by virtue of the amendment was found to be satisfied by the respondent/assessee, the payment of interest under Section 234(B) for failure to pay advance tax in anticipation of such liability created on a future year, based on an amendment, cannot be made. We are therefore, convinced that the conclusion arrived at by the C.I.T. (Appeals) as well as that of the Tribunal cannot be found fault with. We therefore do not find any scope to entertain these appeals. The substantial question of law raised in these tax case appeals are answered in favour of the assessee.

3. Following the aforesaid judgment, the substantial questions of law are answered against the Revenue and these appeals filed by the appellant stand dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

psa

To:

1. The Commissioner of Income Tax,
   Business Circle X,
   Chennai.

2. Income Tax Appellate Tribunal “D” Bench,
   Chennai.

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

4. The Assistant Commissioner of Income Tax,
   Circle X, Chennai 600 006.

+1cc to Mr.T. Ravi kumar, Advocate, S.R.No.34765

TCA Nos.172 and 173 of 2011

NR(CO)
CT/13/07/2022