IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.1004 of 2015

The Commissioner of Income Tax,
Central-II,
No.108, Nungambakkam High Road,
Chennai - 600 034. ... Appellant

-Vs-

M/s.Binny Limited,
No.1, Cooks Road,
Otteri Perambur,
Chennai - 600 011.
PAN:AAA CB 2529 G ... Respondent

PRAYER : Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai dated 22.05.2015 in I.T.A No.1042/Mds/2014.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

J U D G M E N T

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

The appellant is before this Court aggrieved by the impugned order dated 22.05.2015 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai in I.T.A.No.1042/Mds/2014 for the assessment year 2008-09.

2. By the impugned order, the Tribunal has rejected the appeal filed by the respondent assessee and thus affirmed the order of the Commissioner of Income Tax (Appeals) dated 24.12.2013 in I.T.A.No.349/13-14 for the assessment made in assessment order dated 31.12.2010 under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2008-09.

3. However while passing the impugned order, the Tribunal has increased the disallowance to 2% of exempt income as expenditure incurred towards earning of exempt income. The relevant paragraph from the impugned order reads thus:

"5.1. Since in the present case, the assessee has not furnished details of expenditure incidental to earning of exempt income, in the interest of justice, it is appropriate to

disallow 2% of exempt income as expenditure incurred towards earning of exempt income. By placing reliance on the judgment of the Jurisdictional High Court in the case of Simpson & Co. Ltd. vs. DCIT in TC(A)NO.2621 of 2006 dated 15.10.2012, wherein it was held that 2% of the exempt income to be disallowed, this ground of appeal is partly allowed."

4. As far as the second issue is concerned, the Tribunal has held that the unabsorbed depreciation concerning assessment year 2001-02 and assessment years prior thereto can be set off for the subsequent years without any set time limit. Aggrieved by the same, the Department is before this Court.

5. At the time of admission, the following substantial questions of law has been framed by this Court:

"1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Rule 8D which was inserted by Income Tax (Fifth Amendment) Rules, 2008 with effect from 24.03.2008, is not applicable to the assessment year 2008-09?

2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that unabsorbed depreciation relating to the assessment year 2001-02 and assessment years prior *thereto can be set off in subsequent years, without any limit, as per the amended provision of Section 32(2) of the Income Tax Act?"*

6.The learned Senior Standing Counsel for the appellant / Revenue relies upon various decisions of this Court rendered in the case of ***M/s.Simpson & Co. Ltd Vs. DCIT*** in ***T.C.A.No.2621 of 2006 dated 15.10.2012***, in the case of ***EID Parry Vs. The Assistant Commissioner of Income Tax, Chennai*** in ***T.C.A.No.2511 of 2006 dated 30.10.2012*** and ***The Commissioner of Income Tax Vs. M/s.Tube Investments of India Ltd.*** in ***T.C.A.No.524 of 2007 dated 17.12.2014.***

7. We have perused the decisions cited by the learned Senior Standing Counsel for the Department.

8. We are of the view that the said decisions are not applicable to the facts of the case. Reading of the assessment order indicates that the Assessing Officer had computed the disallowance in accordance with Section 14A of the Income Tax Act r/w. Rule 8D of the Income Tax Rules, 1962 inserted with effect from 24.03.2008. Therefore, the enhancement of the disallowance of 2% from the Tribunal is correct. It is relevant to note that the Hon'ble Supreme

Court in the case of ***Commissioner of Income Tax Vs. M/s.Essar Teleholdings Ltd.,*** reported in ***401 ITR 449*** relied on earlier judgment of ***M/s.Godrej Investments Private Limited Vs. DCIT Circle*** reported in ***394 ITR 449***

9. In view of the above, it has to be held that the appeal filed by the appellant Department as far as its disallowance under Section 14A of the Income Tax Act r/w. Rule 8D of the Income Tax Rules, 1962 is liable to be dismissed as Rule 14A is applicable from assessment year 2008-09. As far as the second question of law is concerned, the issue is covered by the decision of this Court in the case of ***Commissioner of Income Tax, Trichy Vs. KMC Specialty Hospitals India Ltd.,*** in ***(2021) 130 taxmann.com 215(Madras).***

10. In the line of the above, the questions of law raised in this appeal are answered in favour of the assessee and therefore, this Tax Case Appeal is liable to be dismissed, accordingly, it is dismissed. No costs.

(R.S.K., J.) **(C.S.N., J.)**
04.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

The Income Tax Appellate Tribunal 'C' Bench, Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

vji

T.C.A.No.1004 of 2015

04.11.2024