IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM :

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

T.C.A.No.350 of 2015

The Commissioner of Income Tax
Chennai. .. Appellant

Vs.

M/s. TVS Motor Company Limited
Jayalakshmi Estates, 29 (Old No.8)
Haddows Road, Chennai – 600 006. .. Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai dated 04.10.2012 passed in I.T.A.No.943/Mds/2011.

For the Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel

For the Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

This tax case appeal is directed against the common final order dated 04.10.2012 passed by the Income Tax Appellate Tribunal in I.T.A.No.943/Mds/2011 for the Assessment Year 2006-07.

2. By the impugned order, the Tribunal has also disposed a Income Tax Appeal in I.T.A.No.944/Mds/2011 for the Assessment Year 2007-08. Aggrieved over the same, the Income Tax Department had also filed T.C.A.No.351 of 2015 against the order made in I.T.A.No.944/Mds/2011 for the Assessment Year 2007-08. The said appeal has been kept pending to await for this order.

3. Both the appeals were earlier admitted on 21.07.2015. As far as the present appeal in T.C.A.No.350 of 2015 is concerned, the following substantial questions of law were framed by the Court on 21.07.2015 for being answered.:-

> *"i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that disallowance of expenses on Asian Project amounting to Rs.16,14,13,328/- is to be allowed?*
>
> *ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding the disallowance of expenditure on replacement of dies and moulds amounting to Rs.6,72,36,406/- is to be allowed?*
>
> *iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding the deduction under Section 35(1)(iv) of the Income Tax Act amounting to Rs.5,81,72,790/- is to be allowed?*

*iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that deduction under Section 35(2AB) of the Income Tax Act amounting to Rs.12,58,94,838/- is to be allowed?*

*v) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding the deduction under Section 80IA of Rs.61 lakhs is to be allowed?*

*vi) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the disallowance of Rs.8,01,793/- made on Entry tax is to be allowed? vii) Was there enough material before the Tribunal to come to such conclusion as it had arrived at and the reasoning of the Tribunal is bad?"*

4. We have heard *Mr.J.Narayanaswamy*, learned counsel appearing for the appellant and *Mr.R.Vijayaraghavan*, learned counsel appearing on behalf of the respondent assessee.

5. The dispute in the present appeal pertains to the following:-

***i.*** Expenditure on ASEAN Project – Indonesia

***ii.*** Expenditure on replacement of Dies and Moulds

***iii.*** Deduction under Section 35(1)(iv)

***iv.*** Deduction under Section 35(2AB)

***v.*** Deduction under Section 80IA

***vi.*** Entry Tax

6.1. Insofar as Issue (1) is concerned, similar appeal filed by the Income Tax Department in T.C.A.No.331 of 2011 was dismissed on 08.03.2022. The issue is also covered by the decision of the Hon'ble Supreme Court of India in the case of ***Taparia Tools vs. JCIT***[1].

6.2. Issues (2) and (3) are covered in favour of the assessee by the assessee's own case reported in ***364 ITR 1*** (paragraph 28 to 32).

6.3. For issue (4), the order of the Assessment Year 2005-06 has been followed.

6.4. Insofar as issues (5) and (6) are concerned, the same are covered in favour of the assessee in the case of ***CIT vs. Thiagarajar Mills***[2] and ***364 ITR 1*** (paragraphs 33 and 34) respectively.

6.5. The same can be tabulated as under:-

1 *55 taxmann.com 361*
2 *TC(A) Nos.69 to 70 of 2010; dated: 07.06.2010.*

| ***Si. No.*** | ***Issues*** | ***AO*** | ***CIT(A)*** | ***ITAT*** | ***Remarks*** |
|---|---|---|---|---|---|
| 1. | Expenditure on ASEAN Project – Indonesia | Page 2<br>Para 1 | Page 20 Para 4 | Page 49 Para 3 to 5 | ITAT followed Assessment Year 2000-01.<br>In AY 2000-01, Department has accepted the order of the Tribunal on this issue and preferred appeal only on other issues which was dismissed in TC(A) No.331 of 2011 dated 08.03.2022.<br>In any case, ratio covered by SC decision in ***Taparia Tools*** (*supra*) |
| 2. | Expenditure on replacement of Dies & Moulds | Page 3<br>Para 2 | Page 27<br>Para 9 | Page 53<br>Para 6 to 8 | Covered in favour of assessee by assessee's own case reported in ***364 ITR 1*** @ para 29 |
| 3. | Deduction u/s. 35(1)(iv) | Page 5<br>Para 4 | Page 23<br>Para6 | Page 55<br>Para 9, 10 | Covered in favour of assessee by assessee's own case reported in ***364 ITR 1*** @ para 28 to 32 |
| 4. | Deduction u/s. 35(2AB) | Page 5<br>Para 5 | Page 24<br>Para 7 | Page 57<br>Para 11 to 15 | Factual. ITAT directed R&D as certified by DSIR in Form 3CL to be given. Followed AY 2005-06 order. |
| 5. | Deduction u/s.80IA | Page 4<br>Para 3 | Page 24<br>Para10 | Page 61<br>Para21 to 24 | Covered in favour of assessee in the case of ***Thiagarajar Mills*** (*supra*) |

| ***Si. No.*** | ***Issues*** | ***AO*** | ***CIT(A)*** | ***ITAT*** | ***Remarks*** |
|---|---|---|---|---|---|
| 6. | Entry Tax | Page 6<br>Para 6 | Page 29<br>Para 12 | Page 62<br>Para 25 to 27 | Covered in favour of assessee by assessee's own case reported in ***364 ITR 1*** @ para 33 & 34. |

7. Therefore, the substantial questions of law are answered against the Revenue and in favour of the respondent assessee. In view of the above, the present appeal filed by the Income Tax Department is liable to be dismissed. It is accordingly dismissed. There shall be no order as to costs.

(R.S.K., J.) (C.S.N, J)
09.09.2024

Neutral Citation:Yes/No

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To:

1. The Commissioner of Income Tax
   Chennai.

2. The  Income Tax Appellate Tribunal
   Madras “A” Bench, Chennai.

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

(drm)

T.C.A.No.350 of 2015

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