IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

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

T.C.A.No.921 of 2015

M/s.Chettinad Quartz Products Ltd.,
(Now merged with M/s.Chettinad
Morimura Semi Conductor Material P Ltd.,) ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle-I(3),
Chennai - 600 034. ... 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 29.05.2015 in I.T.A.No.51/Mds/2014 for the assessment year 2009-10.

For Appellant	:	Mr.A.S.Sriraman for M/s.S.Sridhar
For Respondent	:	Mr.T.Ravikumar Senior Standing Counsel

JUDGMENT

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

The following substantial questions of law were framed by this Court on 13.10.2015 at the time of admission of the present appeal : -

(i) Whether the Appellate Tribunal is correct in law in approving the method of computation of the deduction under Section 10B of the Act made by the respondent in the assessment order passed for the assessment year under consideration in overlooking the purposive legislation in granting such deduction based on the 'stand alone' computation of such profits of the eligible unit of the appellant without any adjustments including the adjustment of the unabsorbed depreciation/losses of the earlier assessment years?

(ii) Whether the Appellate Tribunal is correct in law in approving the method of computation of the deduction under Section 10B of the Act made by the respondent in the assessment order passed for the assessment year under consideration overlooking the distinction brought out by the appellant in the matter of quantification of the eligible profits under pre and post amendment situations ?

(iii) Whether the Appellate Tribunal is correct in law in approving the method of computation of the deduction under Section 10B of the Act made by the respondent in adjusting unabsorbed depreciation which should be considered as current year's depreciation for the limited purpose of the provisions in Sections 70 and 71 of the Act and not to be extended beyond its scope especially for the quantification of eligible profits ?

2. The present appeal pertains to the Assessment year 2009-2010. The appellant had challenged a similar order of the Appellate Tribunal dated 16.10.2014 in ITA No.430/Mds/2014 for the Assessment Year 2008-09 in TCA.No.128 of 2015. By an order dated 06.08.2024, TCA.No.128 of 2015 was allowed and the substantial questions of law were answered in favour of the Appellant in terms of the following decisions of this Court :-

(i) **M/s.Comstar Automative Techonologies Private Limited (formerly known as Visteon Powertrain Control Systems India Private Limited, Keelakaranai Village, Malrosapuram Post, Maraimalai Nagar, Chenalpattu District - 603 204) Vs. The Deputy Commissioner of Income Tax, Company Circle-I (3), 121, Nungambakkam High Road, Chennai - 600 034** in T.C.A.No.228 of 2011*;*

(ii) **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited** *in (2021) 129 taxmann.com 118 (Madras);*

(iii) **CIT vs. S.R.A.Systems Ltd** *T.C.A.No.975 of 2010*

4. In **M/s.Comstar Automative Techonologies Private Limited vs. The Deputy Commissioner of Income Tax** referred to supra, it was held as under:-

27.Therefore the law has been settled by the said decision of the Hon-ble Apex Court, where in clear terms, it has been held that, the deductions either under Section 10A or 10B would be made *while computing the gross total income of the eligible undertaking (like the Assessee) under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI of the Act.*

28.Here is the case in hand, the total income was first arrived at by the Revenue through the Assessing Officer in the Assessment order by computing the total income by way of brought forward or carry forward the depreciation allowance of the earlier Assessment years and set off the unabsorbed depreciation first and making the return Nil, thereby leaving the Assessee in a position where it could not claim an deduction under Section 10B as there was no income after set off of carry forward depreciation and unabsorbed depreciation from earlier years. 29.This method of computing the income in the present case made by the Revenue is totally against the said law as has been declared by the Hon-ble Apex Court in the aforesaid decision in Commissioner of Income~tax v. Yokogawa India Ltd., (cited supra).

30.Therefore we have no hesitation to hold that, the decision of the ITAT, which is impugned herein, would not stand in the legal scrutiny, in view of the law having been declared by the Hon-ble Apex Court. Therefore, we are of the view that, the Substantial Question of Law raised in this Appeal is covered by the said decision, therefore, it can be answered accordingly".

5. In the case of **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited** in (2021) 129 taxmann.com 118 (Madras), the Court upheld the order passed by the Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 holding the assessee would be entitled to deduction under Section 10A and

disallowance made by the Assessing Officer was not correct. The Court followed its decision in **M/s.Comstar Automative Techonologies Private Limited** referred to supra in **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited ,** it was observed as under : -

".....

7. *The order passed by the Income Tax Appellate Tribunal was challenged by the Department in T.C.A.No.1916 of 2008 and the Hon'ble Division Bench of this Court by its judgment dated 26.10.2018 confirmed the order of the Income Tax Appellate Tribunal dated 16.05.2008 made in I.T.A.No.2255/Mds/06 for the Assessment year 2002-03 and dismissed the appeal. In view of the judgment of the Hon'ble Division Bench of this Court, it is clear that the applicability of Clauses (ii) and (iii) of Sub Clause (2) to Section 10B of the Act, the impugned order passed by the Income Tax Appellate Tribunal is proper. In view of the order passed by the Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 and the judgment passed by the Hon'ble Division Bench of this Court on 26.10.2018 in Tax Case Appeal No.1916 of 2008, the assessee Company would be entitled to deduction under Section 10A and disallowance made by the Assessing Officer was not correct. Since the order passed under Section 263 itself has been set aside, the cause of action for re-assessment does not survive.*

4. *Mr.R.Sivaraman, learned counsel appearing for the respondent~assessee submitted that following the judgments referred above, the questions of law may be decided in favour of the assessee and the appeal may be dismissed.*

5. *In view of the submissions made by the learned counsel on either side, following the decision of this court dated 02.03.2021 made in T.C.A.No.975 of*

2010 [cited supra], the Questions of Law are decided against the Revenue and in favour of the assessee. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs."

3. In view of the above decisions, the substantial questions of law is answered in favour of the appellant. Accordingly, the present appeal stands allowed. No costs.

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

13.08.2024

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

<u>To</u>

The Assistant Commissioner of Income Tax,
Company Circle-I(3),
Chennai - 600 034.

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

kkd

T.C.A.No.921 of 2015

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