IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.446, 830 & 831 of 2007

The Commissioner of Income-tax,
Madurai. ..Appellant in all the T.Cs.

Vs.

M/s.Thiagarajar Mills Ltd.,
Kappalur,
Madurai-625 008. ..Respondent in all the T.Cs.

T.C.(A) No.446 of 2007 under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C' in I.T.A. No.1565/Mds/2004 dated 21.04.2006 for the assessment year 1999-2000. against the order of the Commissioner of Income Tax (Appeals)-I Madurai dated 26/3/04 in PAN/GIR No.AAACT 4304R in ITA.No.179/2002-03 for the assessment year 1999-2000 order of the Deputy Commissioner of Income Tax Company Circle I, Madurai.

Tax Case (A) Nos.830 and 831 of 2007 under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. Nos.1673 & 1674/Mds/03 dated 23.11.2005 for the assessment years 1997-98 and 1998-99, respectively, against the Order of The Commissioner of Income Tax (Appeals)I Madurai dated 4/6/2003 in PAN/GIR No.AAACT 4304R.in ITA.No.106/2001-02 and ITA.No.64/2000-2001 and against the order dated 30/3/01 & 20/3/2000 order of the Joint Commissioner of Income Tax Special Range-II Madurai in PA.No.AACT.4304R and 47-0232-CN 9955.

For Appellant in all the T.Cs. : Mr.J.Narayanaswamy
Standing Counsel for
Income-tax Department

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JUDGMENT
(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

T.C.(A) No.446 of 2007 is filed under Section 260A of the Income-tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C' in I.T.A. No.1565/Mds/2004 dated 21.04.2006 for the assessment year 1999-2000, raising the following substantial questions of law:-

> 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty and sales tax do not form part of the turnover, for the purpose of calculation of deduction u/s 80HHC?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that additional liability on account of purchase of plant and machinery, which arose due exchange fluctuation has to be treated as revenue expenditure?

T.C.(A) Nos.830 and 831 of 2007 are filed under Section 260A of the Income-tax Act, 1961, by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. Nos.1673 & 1674/Mds/03 dated 23.11.2005 for the assessment years 1997-98 and 1998-99 respectively, raising the following substantial questions of law:-

> 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty, sales tax and conversion charges do not form part of the turnover, for the purpose of calculation of deduction u/s 80HHC?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that additional liability on account of purchase of plant and machinery, which arose due exchange fluctuation has to be treated as revenue expenditure?

2. The facts leading to the above substantial questions of law are as under:

The assessee is a company incorporated under the Companies Act. The relevant assessment years are 1999-2000, 1997-1998 and 1998-1999 and the corresponding accounting years ended on 31.03.1999, 31.03.1997 and 31.03.1998 respectively. For the said assessment years, the assessee filed Returns of income and the Assessing Officer completed the assessments and restricted the benefit under Section 80HHC of the Income-tax Act ("Act" in short) by including excise duty, sales tax and conversion charges to the total turnover. Further, the assessee claimed a portion of additional liability on account of purchase of plant and machinery, which arose due to exchange fluctuation, as revenue

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expenditure. The Assessing Officer disallowed the same and treated the additional liability as capital expenditure. Aggrieved by the orders, the assessee filed appeals before the Commissioner of Income-tax (Appeals). The C.I.T.(A) held that the excise duty, sales tax and conversion charges are not includible in the total turnover for the purpose of Section 80HHC of the Act. Further, the C.I.T.(A) held that the additional liability on account of plant and machinery which arose due to exchange fluctuation has to be treated as revenue expenditure. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeals and confirmed the orders of the C.I.T.(A). Hence the present appeals by the Revenue.

3. Learned Standing Counsel appearing for the Revenue fairly stated that the issue in respect of Question No.1 in both the tax cases, stand covered by the Supreme Court's judgment reported in 290 ITR 667 in the case of C.I.T. Vs. Lakshmi Machine Works. Hence, in respect of Question No.1 in both the tax cases, no substantial questions of law arise for consideration of this Court.

4. In respect of Question No.2 in both the tax cases, it is seen that the the Tribunal followed the assessee's own case relating to the earlier assessment year 1995-96 and held as follows:-

> "It transpires that this issue, on identical facts, has been decided in favour of the assessee by this Tribunal in I.T.A.1778/Mds/98 in assessee's own case for the assessment year 1995-96. In this decision, the Tribunal had placed reliance on Hon'ble Madras High Court decision in 149 ITR 716 wherein it was held that additional liability arising out of devaluation can be taken to be of the same character as of the original receipt or the original liability and it cannot be taken to be having a different character. Adhering to the doctrine of binding precedents, we uphold the order of the Commissioner of Income Tax (Appeals) treating the liability on exchange fluctuation of machinery which was claimed as replacement in earlier year as revenue expenditure."

It is seen that the Tribunal consistently following the issue in favour of the assessee for the earlier assessment years, by relying on this Court judgment reported in 149 ITR 716 in the case of Lakshmi Card Clothing Mfg. Co. Pvt. Ltd. Vs. Commissioner of Income-tax, Tamil Nadu-V, Madras. The Revenue is unable to bring to our notice any compelling reason to take a different view and also there is no detail as to whether the Revenue has preferred any appeal against the earlier Tribunal orders or not. In view of the same, we do not find any error or legal infirmity in the orders of the Tribunal so as to warrant interference. Under the circumstances, no substantial questions of law arise for consideration of this Court in respect of Question No.2 in both the tax cases.

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5. In the result, no substantial questions of law arise for consideration of this Court and accordingly, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.831 of 2007 is closed. No costs.

km

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench "C",
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai-600 090. (5 Copies)

2. The Commissioner of Income-tax (Appeals) I,
   Madurai.

3. The Deputy Commissioner of Income-tax,
   Company Circle-1, Madurai.

4. The Joint Commissioner of Income-tax,
   Special Range II, Madurai.

5. The Commissioner of Income Tax, Madurai.

+2 ccs to Mr.Pushya Sitaraman, Advocate Sr.No.34430 & 34431.

TEJ(CO)
DCP/20.6.07

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