IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Tax Case (Appeal) No. 564 of 2008
and
M.P.Nos.1 and 2 of 2008

M/s.Sterling Holiday Financial Services Ltd.,
Padma Complex, 3rd Floor,
320, Annasalai, Nandanam,
Chennai-600 035. .. Appellant

Vs

Assistant Commissioner of Income Tax,
Company Circle VI (4),
121, Nungambakkam High Road,
Chennai-600 034. .. Respondent

Prayer:- Tax Case Appeal filed under section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'B' dated 13.10.2006 ITA No.1487/Mds/2003.

For Appellant : Mr.M.P.Senthilkumar
For Respondent : Ms.K.G.Usha Rani

JUDGEMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J.]

Heard Mr.M.P.Senthil Kumar, learned counsel for the appellant/assessee and Ms.K.G.Usha Rani, learned standing counsel for the respondent/Revenue.

2. This appeal, by the Appellant/assessee, is directed against the order passed by the Income Tax Appellate Tribunal in ITA No.1487/Mds/2003 dated 13.10.2006 for the assessment year 1996-97.

3. The Tax Case Appeal has been admitted on the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in disallowing the expenditure incurred in connection with the share issue by the Appellant without considering the nature of expenditure and merely relying on the decision of the Supreme Court in Brooke Bond's case?
>
> 2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in restricting the claim of depreciation and in not allowing the full amount of depreciation claimed by the appellant?"

4. The first question to be considered is with regard to the expenditure incurred in connection with the share issue by the assessee. According to the assessee, the Tribunal merely relied upon the decision of the Hon'ble Supreme Court in the case of **Brooke Bond**

India Ltd., Vs. Commissioner of Income Tax reported in **(1997) 225 ITR 0798 (SC)**.

5. We have perused the order passed by the Tribunal and in paragraph No.2 of the impugned order, this issue has been dealt with. From the order, we find that the Tribunal has rightly applied the decision of **Brooke Bond India Ltd., Vs. Commissioner of Income Tax** reported in **(1997) 225 ITR 0798 (SC)** and held that the expenditure incurred in respect of the issue of share is "capital expenditure".

6. The submission of the learned counsel for the appellant/assessee is that there are other expenditures, which ought to have been taken into consideration by the Tribunal.

7. Unfortunately, neither before the Assessing Officer nor before the Commissioner of Income Tax (Appeals) nor before the Tribunal nor before us, the break up details of such expenditures were furnished by the assessee. Therefore, we find that the finding rendered by the Tribunal on the said issue is perfectly valid. Accordingly, the substantial question of law No.1 is answered against the assessee and in favour of the Revenue.

8. The next question is with regard to the claim of depreciation, on the full amount as claimed by the assessee.

9. On facts, the Tribunal found that the transaction done by the assessee lacks bonafide. This is, on account of the dates and events, which had occurred in the transaction, pertaining to a machinery being a pollution control equipment. After considering the factual position the Tribunal has held as follows:-

> "10. From the assessee order, it clearly emerges that SRHSHL had fabricated this machinery by 22.7.94 whereas the same was sold to Veera Enterprises on 22.09.1995 and Veera Enterprises sold the Machinery to the assessee on 25.09.1995. Now the question is use between the period 22.07.1994 and 22.09.1995 and this aspect has not been verified by the AO. Though practically it seems that the machine must have been utilized because the Assessing Officer has clearly stated that the assessee could not have carried on its day to day work without this air pollution control equipment. Still in the interest of justice we set aside the order of the CIT(Appeals) and remit the matter back to the file of the Assessing Officer for re-verification. Whether the machinery was used by SRHSHL between 22.07.1994

> to 22.09.1995 and if such use was made then depreciation can be allowed only on Rs.16,95,338/-. We are giving this direction because Revenue has not filed any appeal for allowing depreciation on Rs.16,95,338/-."

10. After elaborately hearing the learned counsel for the appellant/assessee, we find that there is absolutely no material to dislodge the factual findings recorded by the Tribunal, confirming the findings of the CIT (Appeals) as well as the Assessing Officer and the transaction clearly would go to show that there is serious doubts regarding its bonafides.

11. However, the Tribunal has granted a partial relief and remanded the matter back to the Assessing Officer for re-verification to ascertain whether the machinery was used by the SRHSHL between 22.7.94 and 22.9.95 and if there was such a use, then the depreciation can be allowed only on Rs.16,95,338/-. We find that the Tribunal rightly took note of the factual matrix and arrived at the said conclusion.

12. The learned counsel appearing for the appellant/assessee relied upon the decision of the Hon'ble Division Bench High Court of

Gujarat, in the case of **Chokshi Metal Refinery Vs. Commissioner of Income Tax** reported in **(1977) 107 ITR 0063,** for the proposition that the Officers of the Income Tax Department were not taken advantage of ignorance of the assessee, as to its rights and their duties to assess the taxpayers in every reasonable way.

13. We find that the said decision could have no application to facts of the case on hand, since the authorities below as well as the Income Tax Appellate Tribunal found that the SRHSHL had fabricated the machinery by 22.7.94 and sold the machinery to Veera Enterprises on 22.9.95 and Veera Enterprises sold the machinery to the assessee on 25.9.95, which in turn is stated to have leased the machinery back to the vendor, SRHSHL. While the sale was effected in favour of Veera Enterprises, the Tribunal noted the sale consideration at Rs.16,86,904/- including the sales tax. However, when the machinery was sold to the assessee / company, it was for Rs.73 lakhs.

14. Thus, on facts, the Tribunal rightly suspected the bonafides of the transaction and remanded the matter back only for a limited purpose. Thus, we find that there is no error in the order passed by the Tribunal. Accordingly, question No.2 is answered against the assessee

and in favour of the Revenue.

15. In the result, the Tax Case Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

[T.S.S., J.,] [N.S.S., J]
03.04.2018

Index : No
Internet : Yes
kv/srk
To

The Assistant Commissioner of Income Tax,
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