IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **D.KRISHNA KUMAR**

T.C.A.No.349 of 2016

The Commissioner of Income Tax,
Trichy .. Appellant

versus

M/s.Samudra Shoe Overseas Ltd.,
No.71, Centry Plaza,
560-561 Anna Salai,
Chennai 600 018. .. Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in I.T.A.No.1515/Mds/2012, dated 29.05.2015.

For Petitioner :Mr.J.Narayanasamy
Standing Counsel for Income-Tax

ORDER
(Order of the Court was made by **S.MANIKUMAR, J.**)

Challenge in this Tax Case Appeal, is to an order made by the Income Tax Appellate Tribunal in I.T.A.No.1515/Mds/2012, dated 29.05.2015, by which, the

Tribunal has dismissed the appeal preferred by the revenue, against the order of the Commissioner of Income-Tax, dated 31.05.2012.

2. Before the Income Tax Appellate Tribunal, two grounds of appeal have been raised. The first ground of appeal was with regard to addition of Rs.6,63,48,983/-, towards interest waived by the financial institution and the second ground was to the addition of Rs.1,98,92,271/-, being the principal amount waived by the financial institution.

3. As regards first ground of appeal, the Income Tax Appellate Tribunal has confirmed the findings of the Commissioner of Income Tax (Appeals), disallowing the above sum of Rs.6,63,48,983/-, which was debited in the Profit & Loss Account in the assessment years 1994-95 to 2002-03 and the same was taken as income of the assessee. With regard to second ground of appeal, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and directed the Assessing Officer to reconsider the issue afresh, in the light of the materials and thereafter, to decide the same, in accordance with law, after considering all the judgments referred before the Tribunal and giving reasonable opportunity to the assessee.

4. Aggrieved by the orders of the Income Tax Appellate Tribunal, Chennai, the Commissioner of Income Tax, Chennai, appellant herein, has filed this appeal, on the following substantial questions of law,

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 43B, with respect to the interest on loan waived by the Bank in one time settlement?
>
> (2) While dealing with the issue relating to the disallowance of the principal waived by the bank, whether the Tribunal was right in remitting the case back to the assessing authority with the direction to examine the purpose of loan and the utilisation thereof and pass orders, as per the decision reported in **331 ITR 337 (Mad.)?"**

5. Mr.J.Narayanasamy, learned counsel appearing for the appellant fairly submitted that he is not pressing Substantial Question No.2. Submission is placed on record.

6. As regards disallowance of interest under Section 43B, learned counsel appearing for the appellant submitted that the Tribunal has erred in holding that the assessee is entitled for deduction under Section 43B with respect to the interest on loan waived by the bank in one time settlement. He

further submitted that the Tribunal ought to have appreciated that the assessee having not actually paid the interest, no deduction under Section 43B is warranted.

7. According to the Assistant Commissioner of Income-Tax, the assessee-company disallowed an expenditure of Rs.6,63,48,983/-, under Section 43B of the Income-tax Act, 1961 (in short 'the Act') towards interest payable to financial institution which was return back. The above said amount of Rs.6,63,48,983/-, relates to interest due to IDBI bank for the period relating to assessment years 2003-04 to 2005-06. IDBI bank has agreed to the proposal for payment of one-time settlement and accordingly, waived the interest to an extent of Rs.6,63,48,983/-. However, for the year under consideration, the assessee claimed the interest of Rs.6,63,48,983/- as deduction, under Section 43B of the Act. The appellant has contended that under Section 43B of the Act, interest would be allowed in the case where the same was paid to the financial institution on or before filing of return of income. Since the entire interest was waived by IDBI Bank, there was no actual payment. Therefore, the claim of the assessee for deduction under Section 43B cannot be allowed.

9. Per contra, it is the case of the assessee that the interest claimed by the assessee, as deduction for the year under consideration to the extent of Rs.6,63,48,983/-, relates to the period of assessment years 2003-04 to 2005-06. During those years, the assessee disallowed the interest under Section 43B of the Act, since it was not actually paid. Therefore, for the earlier years, the assessee itself has treated the above said amount of Rs.6,63,48,983/-, as its income. During the year under consideration, IDBI Bank has waived the entire interest of Rs.6,63,48,983/-. Since the interest which was waived by the IDBI Bank was already taken as income for the earlier years under Section 43B of the Act, the same was claimed as deduction under Section 43B of the Act, during the year under consideration.

10. Having regard to the rival submissions and the material on record, the Tribunal has passed the following orders,

> "Admittedly, the Assessing Officer disallowed the interest to the extent of Rs.6,63,48,983/- under Section 43B of the Act, while computing the taxable income for the assessment years 2003-04 to 2005-06. In other words, the interest, which is otherwise to be allowable under mercantile system of accounting, was taken as income in view of Section 43B of the Act. During the year under consideration, the IDBI Bank waived the entire interest portion to

the extent of Rs.6,63,48,983/-. The assessee claimed this amount as deduction while computing the total income. The Assessing Officer disallowed the claim of the assessee on the ground that there was no actual payment of interest. However, the CIT(Appeals) found that the above sum of Rs.6,63,48,983/-, which was debited in the Profit & Loss account in the assessment years 1994-95 to 2002-03, was disallowed and the same was taken as income of the assessee. Therefore, there is no question of any disallowance once again during the year under consideration. It is not in dispute that the claim made by the assessee with regard to waiver of interest was taken as income in the earlier assessment years by disallowing the claim of the assessee under Section 40A(3) of the Act. Therefore, as rightly pointed out by the CIT(Appeals), there is no need for disallowing the very same amount once again. Accordingly, this Tribunal do not find any infirmity in the order of the CIT(Appeals) and accordingly, the same is confirmed."

11. Going through the material on record, this Court is of the view that the Tribunal was right in holding that the assessee is entitled for deduction under Section 43B, with respect to the interest on loan waived by the Bank in one time settlement and thus, answered the first substantial question of law against the revenue.

12. No valid grounds have been made to reverse the impugned order. In the result, the Tax Case Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (D.K.K., J.)
06.06.2016

Index: Yes
Internet: Yes
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To

The Income Tax Appellate Tribunal,
"B" Bench, Chennai.

S.MANIKUMAR, J.
AND
D.KRISHNAKUMAR, J.
skm

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