IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

T.C.A. NOS. 1237 & 1238 OF 2007

Commissioner of Income Tax
Chennai. .. Appellant in both the appeals

- Vs -

M/s.Shriram City Union Finance Ltd.
123, Angappa Naicken Street
Chennai 600 001. .. Respondent in both the appeals

Appeals filed under Section 260-A of the Income Tax Act against the order dated 21.04.06 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, made in ITA Nos.72 & 89/Mds/2002.

For Appellant : Mr. J.Narayanaswamy

For Respondents : Mr. S.Sridhar

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee and dismissing the appeal filed by it, the appellant/Revenue is before this Court by filing the present appeals. This Court, vide order dated 11.9.07, while admitting the appeals, framed the following substantial questions of law for consideration :-

"i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to account for only the "additional finance charges" on a cash basis, while it is otherwise following a mercantile system of accounting and also accounting for the very same transaction on a mercantile basis under Company Law?

ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee may be permitted to follow a mercantile system of accounting with respect to Company law and a hybrid system of accounting with respect to Income Tax?

iii) Whether on the facts and circumstances of the case, the Tribunal was right in directing the officer to allow the claim for deduction on account of deposit mobilization expenses, when no evidence or details had been produced to justify the expenditure?"

2. Though TCA No.1236/07 was admitted along with these two appeals, wherein the above three questions of law have been framed, these two appeals are taken up together for disposal. On going through the order of the Tribunal and on enquiry by the Bench, learned counsel for the Department/appellant fairly conceded that substantial questions of law Nos. 1 and 2 does not arise for consideration in these appeals, therefore, there is no necessity to answer those questions of law. Accordingly, this Court is not answering substantial questions of law Nos.1 and 2 in these appeals.

3. Heard the learned counsel appearing for the appellant/Department

and the learned counsel appearing for the respondent/assessee and perused the materials available on record.

4. Insofar as the third question of law, which is common in both the cases is concerned, the same relates to deposit mobilization charges and, therefore, the same is taken up for consideration.

5. Insofar as TCA No.1237/07 is concerned, the same was partially allowed by the Tribunal in favour of the assessee. The contention of the Department is that the verification of the claim has not been done by the competent authority and in that regard, it is submitted that the matter has to be remanded back to the original assessing authority. Learned counsel for the respondent/assessee, on instructions, states that the respondent/assessee has no objection to substantiate their claim before the Assessing Officer. Accordingly, the order of the Tribunal stands modified and the issue in relation to deposit mobilization charges is remanded back to the assessing officer for verification of the claim.

6. Insofar as TCA No.1238/07 is concerned, the CIT (Appeals), in relation to deposit mobilization charges, had remanded the matter to the Assessing Officer. However, the Tribunal dismissed the appeal stating as hereunder :-

"144. Ground (3) : As far as the issue regarding

disallowance of deposit mobilization expenses is concerned, after hearing both the parties, we find that this issue was set aside to the file of the AO by the CIT (Appeals) and who has already allowed such expenses. Therefore, this issue has become infructuous and we dismiss this ground."

7. We find that there is no necessity to answer this issue as in the earlier case, TCA No.1237/07, the Revenue has not challenged the deduction claimed under deposit mobilization expenses. If that has been given effect to by the competent authority in accordance with law, then nothing further survives for consideration in this appeal and we find no reason to entertain this appeal on that ground. Accordingly, the third substantial question of law is answered in the above terms in respect of the above two appeals.

8. For the reasons stated above, TCA No.1237/07 is disposed of modifying the order of the Tribunal to the extent indicated above and TCA No.1238/07 is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (K.B.K.V.J.)
20.07.2015

Index : Yes/No
Internet : Yes/No
GLN

To

1. Commissioner of Income Tax
   Chennai.

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

<u>R.SUDHAKAR, J.</u>
AND
<u>K.B.K.VASUKI, J.</u>

GLN

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