HON'BLE SRI JUSTICE G. CHANDRAIAH
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No. 202 of 2015

Between:

Director of Income Tax(International Taxation) .. Petitioner

And

M/s.Suntech Corpn. FZC, Dubai, UAE .. Respondent

JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") arises out of the Order dated 08.11.2012 in I.T.A.No. 340/Vizag/2011 passed by the Income-Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam (for brevity "the Tribunal") relating to the assessment year 2007-2008. The following substantial questions of law are said to be arising from the orders of the Tribunal for adjudication:

1. In the facts and circumstances of the case whether the Hon'ble Tribunal (ITAT) is justified in law in confirming the order of the learned Commissioner of Income Tax (Appeals) that the Assessing Officer jurisdiction under Section 14 of the Act on mere change of opinion and Section 147 of the Act has no applicability in respect of the orders passed under Section 172 of the Act?
2. In the facts and circumstances of the case whether the Hon'ble Tribunal (ITAT) is justified in law in relying on the decision of the Hon'ble Tribunal (ITAT) Mumbai Bench in the case of South India Corporation (55 ITD 1) ignoring the Delhi High Court Judgment in the case of Emirates Shipping Lin, FZE Vs. Asst. Director of Income Tax (2012) 211 Taxman 82 which squarely covered the issue of powers of assessing officer with regard to re-opening of assessment?

3. In the facts and circumstances of the case whether the Hon'ble Tribunal (ITAT) is justified in not adjudicating the issue of relief under Article 8 of DTAA with UAE?

Heard Sri B. Narasimha Sarma, learned Standing Counsel for Income-Tax for the appellant and Smt.P. Radhika, learned counsel for the respondent and perused the material placed on record.

A careful perusal of the impugned order of the Tribunal reveals that it is a common order passed in ten appeals and the questions which fell for consideration in those appeals are identical. Against the common order in I.T.A.No. 342/Vizag/2011 for the assessment year 2004-2005, the Department preferred I.T.T.A.No. 359 of 2013, and this Court, by judgment dated 19.09.2013, while disposing of the matter, remanded the matter to the Tribunal with a direction to pass independent order by considering the decision of the Delhi High Court reported in **Emirates Shipping Line, FZE v. Assistant Director of Income Tax**[1]. Inasmuch as the questions of law raised in the present appeal are same as those raised I.T.T.A.No. 359 of 2013, which was disposed of by this Court by judgment dated 19.09.2013, the present appeal also is required to be disposed of in terms thereof.

Hence, this appeal is disposed of with a direction to the Tribunal to pass an independent order considering the decision of the Delhi High Court as cited supra after hearing the learned counsel for both the parties without being influenced by its earlier order. No order as to costs.

As a sequel to the disposal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

10.09.2015

CHALLA KODANDA RAM,J

bcj

[1] (2012) 349 ITR 493