IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 8.2.2016.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

T.C.(A) No.1130 of 2007

M/s.Rane Madras Ltd.,
61, Velacherry Road,
Chennai 600 042. Appellant

vs.

The Deputy Commissioner of Income Tax,
Company Circle V(3) Chennai 600 034. Respondent

Tax Case (Appeal) under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal "B" Bench, Chennai dated 12.1.2007 in I.T.A.No.717/Mds/2004.

For appellant : Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyar
For Respondents : Mr.T.Ravikumar

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

The above appeal, by the assessee, under section 260A of the Income Tax Act, 1961, was admitted on 21.8.2007, on the following question of law:-

“Whether on the facts and circumstances of the case, the Tribunal having held that there is no change in the total taxable income even after the withdrawal of depreciation claim was justified in remanding the matter to the assessing officer to consider the issue afresh?"

2. Heard Mr.R.Vijayaraghavan, learned counsel for the appellant/assessee and Mr.T.Ravikumar, learned Standing Counsel for the Department.

3. The appellant/assessee filed a return of income for the assessment year 1997-98 admitting a total income of Rs.2,31,76,199/- under section 115JA of the Act. The income arrived at under normal computation was 'nil'. The return of income was processed accepting book profit admitted under section 115JA.

4. A scrutiny assessment was made on 20.3.2000, computing a total income of more than Rs.3,00,00,000/- and the tax payable thereon was worked out to Rs.40,10,173/-.

5. The appeal filed by the assessee was disposed of in a particular way. While giving effect to the order of the appellate authority, a revision was made computing the total income at 'nil' and the book profit under section 115JA as originally declared by the assessee.

6. Upon receipt of some information about the amount of depreciation claimed by the assessee and allowed for the assessment

year 1997-98, a notice was issued under section 148. The assessee gave a reply. Thereafter, an order of assessment was passed on 12.11.2002 holding that there was a claim for excess depreciation. As a consequence, another order dated 29.5.2003 was passed under section 271(1)(c) of the Act levying a penalty of Rs.27,95,204/-.

7. As against the said order of penalty, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeal by order dated 24.12.2003. This order was also given effect to.

8. However, the Revenue filed an appeal in I.T.A.No.717/2004 on the file of the Income Tax Appellate Tribunal. This appeal was taken up by the Tribunal alongwith the appeal filed by the assessee in respect of the assessment year 1996-97.

9. By a common order passed on 12.1.2007, the Tribunal allowed the appeal filed by the Department against the order of penalty, but, remitted the matter back to the assessing officer, on the ground that there are other issues pending consideration and that therefore, the question as to whether the book profit remained unchanged or not, would determine the outcome of those issues.

10. Satisfied with the order of the Tribunal setting aside the penalty, but, unsatisfied with the eventual order of remand, the

assessee has come up with the above Tax Case Appeal.

11. Though it is contended by Mr.R.Vijayaraghavan, learned counsel for the appellant/assessee that a question of penalty need not depend upon other issues that are pending consideration, as penalty is relatable to every individual item, we do not think that we should really go into the question in view of the subsequent developments.

12. Admittedly, the other issues now stand settled by the order passed in I.T.A.Nos.409 of 2000 and 631 of 2001 dated 20.2.2006, both of which also stand confirmed by the order of this court dated 22.6.2007 in T.C.A.Nos.857 and 858 of 2007.

13. In other words, the order of remand does not survive any more for consideration by the assessing officer. The penalty has to go in view of the subsequent developments and there is no necessity for the assessing officer to reject the same.

14. Therefore, the appeal is disposed of on the ground that it is infructuous and that the assessing officer cannot do anything on the basis of the order of remand. The question of law is left open.

(V.R.S.,J.) (N.K.K.,J.)
8.2.2016.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

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

2. The Deputy Commissioner of Income Tax,
   Company Circle V(3)
   Chennai 600 034.

V.RAMASUBRAMANIAN, J.
AND
N.KIRUBAKARAN, J.

Ssk.

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