In the High Court of Judicature at Madras

Dated : 15.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

T.C.A.No.109 of 2016

The Commissioner of Income Tax,
Salem. ...Appellant

Vs

M/s.Thriveni Earth Movers Pvt.Ltd.,
Salem-16. ...Respondent

APPEAL under Section 260-A of the Income Tax Act against the order dated 29.5.2015 made in I.T.A.No.308/Mds/2015 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai against the Order of the Commissioner of Income-Tax(A), Salem-7, dated 28/11/2014 made in ITA.No.1/2014-15, and against the order of the Joint Commissioner of Income-Tax Range-1, Salem, dated 28/2/2014 made in PAN.NO.AABCT6759R

For Appellant : Mr.T.R.Senthilkumar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961, raising the following substantial questions of law :

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in setting aside the appellate order and directing the Assessing Officer to redo the disallowance made under Section 14A read with Rule 8D, when the Assessing Officer had correctly done disallowance as per the above provisions of law ? and
>
> (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in directing the Assessing Officer to reconsider the interest free funds available with the assessee, including the profits and the extent of borrowed funds

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and the extent of exempted income earned by the assessee, which are not provided under Rule 8D of the Income Tax Rules, 1962 ?"

2. Heard Mr.T.R.Senthilkumar, learned counsel for the appellant/ Revenue.

3. The assessee filed a return of income declaring a particular quantum of income and a short term capital gain. A notice under Section 143(1) was issued and a hearing was conducted. Disallowance under Section 14A claimed by the assessee was not permitted. The amount was added to the income of the assessee.

4. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal partially and remitted the matter back to the Assessing Officer in respect of certain items. The assessee filed a further appeal before the Tribunal. The Tribunal took the view that it is necessary to find out whether the investments were made by the assessee from the borrowed funds or from interest free funds available with the assessee. Hence, the Tribunal set aside the orders of the Lower Authorities and remitted the matter back to the Assessing Officer for finding out the interest free funds available with the assessee including the profits and the extent of borrowed funds.

5. In so far the expenditure claimed by the assessee said to have been incurred for repair, renovation and maintenance of hospitals, etc., is concerned, the Tribunal held that the same also requires reconsideration in the light of the issue under Section 14A being remanded back. It is against the said order of the Tribunal that the Revenue is on appeal.

6. From a bare reading of the facts of the case that we have narrated above and the questions of law that the Revenue has framed for our consideration, it is clear that the appeal does not involve any substantial questions of law. In the order of remand, the Tribunal did not record any categorical finding on the question of disallowance under Section 14A. The Tribunal merely remanded the matter for the purpose of finding out as to how much of the funds were interest free funds or not. It is not a question of law that could arise for our consideration under Section 260A.

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7. Accordingly, the above tax case appeal is dismissed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, 'A' Bench, Chennai.

2.The Commissioner of Income-Tax(A)
Salem-7

3.The Joint Commissioner of Income Tax, Range 1
Salem

+1 cc to Mr.T.R.Senthilkumar, Advocate sr.9712

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