IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

T.C.A. NO. 830 OF 2004

Commissioner of Income Tax – II
Coimbatore. .. Appellant

- Vs -

M/s.Swasti Chem Pvt. Ltd.
Erode. .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 15.9.2003 made in I.T.A. No.1940/Mds/2002 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 1997-1998.

For Petitioner : Mr. M.Swaminathan

For Respondent : Mr. S.Sridhar

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

This Tax Case Appeal is filed by the Revenue against the order passed by the Income Tax Appellate Tribunal dated 15.9.2003 made in ITA No.1940/Mds/2002.

2. During the course of assessment for the assessmet year 1997-98, it was noticed that though the assessee company had shown payment of a sum of Rs.67,48,500/- as commission to its sister concern for the services rendered, however, in actuality it was found that no services have been rendered by the said concern. Inspite of completion of the assessment, due to receipt of further information, which was received subsequently, assessment was reopened u/s 148 of the Income Tax Act. After reassessment, the assessing officer having found the transactions not genuine, disallowed the commission payment against which the assessee filed appeal to the CIT (Appeals).

3. The CIT (Appeals), on scrutiny of the documents and after hearing the arguments of the assessee held that payment of commission was evidenced by the written agreement, which had the approval of the Board's of both the companies and further held that the absence of the agreement on the date of search would not negative the existence of the agreement itself and, therefore, invocation of the provisions, as done by the Assessing Officer for disallowance is not justified. Accordingly, the disallowance was deleted. Aggrieved by the said order, the appeal has been filed by the Revenue.

4. When the matter is taken up for hearing, it is fairly conceded by the learned counsel appearing for the parties that the Tribunal has not considered the substantial

grounds raised before it and, therefore, it would be just and proper for this Court to remand the matter back to the Tribunal for consideration of all the grounds raised in the appeal.

5. Acceding to the request made by the learned counsel for the parties, while the order passed by the Tribunal is set aside, this Tax Case Appeal is disposed of remanding the matter back to the Tribunal for consideration of the all the substantial grounds raised in ITA No.1940/Mds/2002.

(H.G.R.J.) **(A.S.M.J.)**
07.12.2016

Index : Yes / No
Internet : Yes / No
GLN

To

Commissioner of Income Tax – II
Coimbatore.

<u>HULUVADI G.RAMESH, J.</u>
AND
<u>ANITA SUMANTH, J.</u>

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