pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1310 OF 2015

Commissioner of Income Tax – LTU … Appellant
Vs.
M/s. GTL Limited … Respondent

Mr. Tejveer Singh Mastan Singh for the Appellant.
Ms. Neelam C. Jadhav for the Respondent.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 4th DECEMBER, 2017

P.C.

1 The learned counsel appearing for the appellant states that the appellant is challenging the impugned judgment and order dated 2nd January, 2015 in relation to Appeal bearing ITA No.6416/ Mum/2010. This Appeal arises out of an order made by the Assessing Officer under Section 143(3) read with Section 147 of the Income Tax Act (for short "the said Act"). Order of assessment was challenged by the respondent – assessee by preferring an appeal before the Commissioner of Income Tax (Appeals). As far as the order under Section 147 of the said Act is concerned, the Appeal was dismissed. Being aggrieved by the said order, an Appeal was preferred by the respondent – assessee before the Income Tax Appellate Tribunal which has been allowed.

2 The learned counsel appearing for the appellant invited our attention to the finding recorded in paragraph 23 (first paragraph 23) of the impugned judgment. According to him, the finding is that the Assessing Officer had an opportunity to examine the details and there is no specific finding that the Assessing Officer had in fact examined and considered the details. His second submission is that the issue of failure to obtain authorisation was never agitated before the authorities and therefore, for the first time, the issue could not have been agitated before the Income Tax Appellate Tribunal.

3 In paragraph 23 (first paragraph 23), the following is the factual finding recorded by the Appellate Tribunal :-

> "23. .... This is because, the AO had the occasion to examine the details filed by the assessee, which were considered not only by the AO but also by the CIT(A), who in the initial proceedings directed the AO to allow the deduction as per law."
>
> (underline supplied)

4 In paragraphs 22 and 23 on the same page, the following findings have been recorded which read thus :-

> "22. In the current proceedings also, the revenue authorities examined those vary details to come to a different conclusion. This, in our view, the case would in the

clearly fall within the ratio laid down Hon'ble Delhi High Court in the case of CIT vs Kelvinator of India, reported in 256 ITR 1 (Del-FB), approved by the Hon'ble Supreme Court in as reported in 320 ITR 561 (SC).

23. The Hon'ble Supreme Court has emphasized that it is essential to have, reason to believe to reopen the proceedings, this fact, we do not find anywhere in the order or notice. This has since been followed by the Hon'ble Bombay High Court in the case of Sitara Diamond (P) Ltd vs DCIT reported in 262 CTR 299 (Bom)."

5 As far as the first submission is concerned, the finding of fact is that the Assessing Officer had an occasion to examine the details. The finding makes it clear that the Assessing Officer had an occasion to examine the details. In fact, it is mentioned that the details were considered not only by the Assessing Officer but also by CIT (Appeals). This is purely a finding of fact recorded by the Appellate Tribunal. In fact, in paragraph 22, it is reiterated that the authorities had examined various details and had come to a different conclusion. The findings which we have quoted above are not shown to be perverse. Hence, no substantial question of law arises. The Appeal is dismissed.

(A.K. MENON, J) **(A.S. OKA, J)**