

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

Tax Case Appeal Nos.480 and 473 of 2017

M/s.YCH Logistics (India) Private Limited,
Plot No.DV1, SIPCOT Hi-Tech SEZ,
Phase-II, Sirumangadu Village,
Sriperumbudur Taluk,
Kancheepuram District,
Tamil Nadu-602 105.

.. Appellant in
both appeals

Vs.

The Deputy Commissioner of Income Tax,
Corporate Circle -3(2)
Nungambakkam,
Chennai-600 034.

.. Respondent in
both appeals

T.C.A.No.480 of 2017 is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 4.4.2017 in M.P.No.218/Mds/2016 in ITA No.322/Mds/2016.

TCA.NO.480/2017:

Against the Income Tax Appellate Tribunal 'D' Bench, Chennai in TA.No.322/Mds/16 Assessment year 2011-2012 dt.30/6/16.

Against the Income Tax Department, Officer of the Assistant Commissioner of Income Tax Corporate circle-3(2) In GIR.No.AAAC72873C Assessment year 2011-12 dt.12/1/16.

T.C.A.No.473 of 2017 is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 30.6.2016 in ITA No.322/Mds/2016.

TCA.NO.473/2017:

Against the Income Tax Appellate Tribunal 'D' Bench, Chennai in TA.No.322/Mds/16 Assessment year 2011-2012 dt.30/6/16.

Against the Office of the Deputy Commissioner of Income Tax Transfer Pricing Officer-3(2) in CR.No.Y-603/TPO 3(2) AY.2011-2012 Assessment year 2011-12 dt.14/1/2015.

For Appellant : Mr.Sandeep Bagmar R.

For Respondent : Mr.M.Swaminathan

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COMMON JUDGMENT

(Judgment of the Court was made by M.Sundar, J.)

T.C.A.No.480 of 2017 is a statutory appeal filed under Section 260A of the Income Tax Act, 1961 ('IT Act' for brevity).

2 An order made by the Income Tax Appellate Tribunal, being the Income Tax Appellate Tribunal, 'D' Bench, Chennai ('ITAT' for brevity) in a miscellaneous petition being M.P.No.218/Mds/2016 in ITA No.322/Mds/2016 is called in question.

3 Assessment year which is subject matter of the instant appeals is 2011-12. After the matter was heard for some time on 9.8.2017, both the learned counsel, i.e., Mr.R.Sandeep Bagmar, learned counsel for the assessee (appellant before us) and Mr.M.Swaminathan, learned counsel for the Revenue (respondent before us), took time to get instructions from their respective clients as to whether there can be an order of remand to the ITAT.

4 Today, both the learned counsel, after obtaining instructions from their respective clients, are before us and both learned counsel jointly request for an order of remand qua section 10AA of the IT Act aspect of the matter.

5 Therefore, in the light of the joint submission made by both the learned counsel and the consent given by both the learned counsel, there is no necessity to go into the substantial question/s of law that has / have been projected before us and we are not delving into the facts of the case, much less facts of the case in detail. Suffice to say that the order of remand will touch upon only one aspect of the matter, namely, Section 10AA of the IT Act.

6 To be noted, aforementioned miscellaneous petition being M.P.No.218/Mds/2016 was filed seeking to recall an order dated 30.6.2016 made in I.T.A.No.322/Mds/2016. The prayer for recall was predicated primarily on the ground that the

Assessee, inadvertently had not placed an additional paper book at the time of hearing. The relevant and operative portions of the order dated 4.4.2017 made in M.P.No.218/Mds/2016 read as follows :

"4.With regard to ground No.3 relating to disallowance of deduction under section 10AA of the Act, on perusal of the order of the Tribunal, we find that after considering the materials available on record as well as provisions of section, the Tribunal has adjudicated the issue on merits at para 15 & 16 and there appears no requirement to verify any details from the paper book, we are of the opinion that there is no mistake apparent on record warranting rectification / recalling the order.

4.1.Further, with regard to ground No.4 relating to disallowance on account of unrealized foreign exchange loss, we find that the issue has been decided in favour of the assessee at para 21 of the order of the Tribunal. Thus, both the above grounds are dismissed.

4.2.In view of the above, we shall make clear that against the first issue of downward adjustment with respect to TP transactions, the order of the Tribunal is recalled for limited purpose."

7 Before us, both the learned counsel jointly submitted that the only aspect of the matter which requires to be revisited turns on Section 10AA of the IT Act. It was further submitted by both the learned counsel jointly that as Section 10AA of the IT Act has been decided on merits, the Tribunal does not have power of review and therefore, recall was negatived. In other words, the request is to set aside paragraph 4 alone of the recall order dated 4.4.2017. Axiomatically, the other parts of the operative portion of the recall order being paragraphs 4.1 and 4.2 will stand sustained.

8 In view of all that have been set out supra, the following directions are given by consent :

(a) Para 4 alone of the order dated 04.04.2017 made in M.P.No.218/Mds/2016 in I.T.A.No.322/Mds/2016 is set aside;

(b) Axiomatically, the other parts of the operative portion of the order dated 4.4.2017 in M.P.No.218/Mds/2016 in I.T.A.No.322/Mds/2016 being paragraphs 4.1 and 4.2 are sustained.

(c) The matter shall stand remanded back to ITAT for a decision afresh based on materials that have now been placed before the ITAT on

Section 10AA of the IT Act aspect alone;

(d) Though obvious, we make it clear that we express no opinion on the merits of the matter;

(e) We request the ITAT to dispose of the matter as expeditiously as possible.

9 T.C.A.No.480 of 2017 is disposed of on the above terms made on the basis of the consent and joint representation / request made by both the learned counsel. No costs.

10 In the light of the order made in T.C.A.No.480 of 2017, the Tax Case Appeal being T.C.A.No.473 of 2017 assailing the main order dated 30.6.2016 in I.T.A.No.322/Mds/2016, has become infructuous. Accordingly, T.C.A.No.473 of 2017 is dismissed as infructuous. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

To

1.The Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2.The Deputy Commissioner of Income Tax,
Corporate Circle-3(2)
Nungambakkam, Chennai-34.

+1cc to Mr.Sandeep Kumar, Advocate sr.60361

+2cc to Mr.M.Swaminathan, Advocate sr.60915

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T.C.A.Nos.480 and 473 of 2017

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