In the High Court of Judicature at Madras

Dated : 28.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice M.SUNDAR

Tax Case Appeal Nos.515 to 517 of 2017
& CMP.Nos.12742 & 12743 of 2017

The Commissioner of Income
Tax, Chennai ...Appellant in all

Vs

N.Ragunath ...Respondent in all

APPEALS under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal Madras 'C' Bench Chennai dated 29.6.2016 passed in I.T.As.2280/Mds/2015, 2281/Mds/2015 and 2282/Mds/ 2015 for the assessment years 2008-09, 2009-10 and 2010-11.

against the Order of the o/o the Commissioner of Income Tax (Appellant) -2 Chennai -34, dated 30/09/2015 and made in ITA.No.235 & 237/CT(A)-2/2014-15, and against the Deputy Commissioner of Income Tax-Non corporate -Circle -2, Chennai, dated 10/02/2015, 23/02/2015 & 11/02/2015 in PAN.No.GIR.No.ACCPR4059E assessment year 2007-08, 2008-09 & 2009-10.

For Appellant : Mr.T.Ravikumar
For Respondent : Mr.R.Kumar

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

Mr.R.Kumar, learned counsel accepts notice for the respondent.

2. These appeals are directed against the common order passed by the Income Tax Appellate Tribunal in I.T.A.Nos.2280, 2281 and 2282/Mds/2015 dated 29.6.2016.

3. The respondent - assessee is a retailer in garments and a commission agent and is deriving income from house property. He filed return of income for the relevant assessment years. The assessments were taken up for scrutiny under Section 143(3) of

the Income Tax Act, 1961 and the assessable income was arrived at. Subsequently, notices under Section 148 of the said Act were issued and the assessments were reopened. The reasons for reopening were communicated to the assessee and thereafter, the notices under Section 143(2) of the said Act were served on the assessee. During the course of assessment proceedings, the assessee claimed depreciation allowable at 100% on temporary wooden structure for interior decoration effected to the buildings and the showrooms, in which, the assessee was carrying on his ready made garments business.

4. In the books of accounts maintained, the assessee claimed depreciation of 10% of such decoration. During the course of re-assessment proceedings, the assessee furnished details regarding the nature of expenditure and the Assessing Officer was of the view that interior decoration including the false ceiling, partition, tiles, etc., would give enduring benefit to the assessee, as these structure would never be dismantled at frequent intervals and rejected the claim of the assessee for 100% depreciation in view of Explanation (1) to Section 32(1), which was inserted by the Taxation Law (Amendment and Miscellaneous Provisions) Act,1986 with effect from 01.4.1988.

5. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals), who decided the issue in favour of the assessee. The Revenue filed the appeals before the Income Tax Appellate Tribunal, which were dismissed, as against which, these appeals have been filed before this Court, raising the following substantial questions of law :

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the large sums of money incurred towards interior decoration, which gives enduring benefit to the assessee are revenue expenditure in nature ?
>
> 2. Is not the finding of the Tribunal bad, since the assessee, in its books of accounts maintained, had claimed only 10% depreciation, but however, for the purpose of income tax had claimed 100% depreciation on temporary partitions adopting differential treatment, which is not proper? and
>
> 3. Whether the reasoning and finding of the Tribunal are proper in holding that the expenditure incurred on temporary wooden structure are allowable as revenue expenditure and not capital?"

6. The issue which falls for consideration is as to whether the Commissioner of Income Tax (Appeals) and the Tribunal were

right in holding that the assessee is entitled to 100% depreciation on the interior decoration work done, as the assessee does not derive an enduring benefit nor it can be stated to be a capital asset.

7. Firstly, we wish to point out that the issue raised before this Court is a factual issue and cannot be treated as a question of law, much less a a substantial question of law.

8. We have heard the learned counsel for both the parties and perused the materials on record.

9. Though in the books of accounts, the assessee claimed depreciation at the rate of 10% only, during the course of assessment proceedings, the assessee explained the nature of expenses and the major heads of expenses, which have been noted by the Commissioner of Income Tax (Appeals) in paragraph 3.2.1 of the order dated 30.9.2016. The assessee placed reliance on the decisions of the jurisdictional High Court in the cases of

(i) CIT Vs. Ayesha Hospitals (P) Ltd. [reported in 292 ITR 266];

(ii) Thiru Arooran Sugars Ltd. Vs. DCIT [reported in 350 ITR 324];

(iii) CIT Vs. Armour Consultants P. Ltd. [reported (2013) 355 ITR 418];

(iv) CIT Vs. Amrutanjan Finance Ltd. [reported in (2011) 15 Taxmann.com 392] and

(v) M/s.Sundaram BNP Paribas Asset Management Co. Ltd. Vs. ACIT, Chennai [ITA. Nos.518 & 519/Mds/2010 of the Income Tax Appellate Tribunal 'B' Bench dated 07.1.2011].

10. After considering the factual matrix and examining the terms and conditions in the letter of intent issued by M/s.Titan Industries Limited dated 15.3.2012, the Commissioner of Income Tax (Appeals), on facts, concluded that in order to bring into existence the showroom of a particular brand, the assessee carried out certain specific interior works involving interiors, furniture and equipment in the premises, which was leased out to the assessee and that the interior decoration works were carried out in line with the specifications of the brand, whose products were sold by the assessee as a retailer-franchisee depending upon the terms of the agreement.

11. After knowing the factual position, the Commissioner of Income Tax (Appeals) took into consideration the decisions referred above and came to a conclusion that for the interior decoration works done by the assessee in the leased premises, it cannot be stated that the assessee is deriving any enduring benefit nor it can be stated that any capital asset has been created in favour of the assessee. This factual finding was affirmed by the Tribunal in the impugned order.

12. Thus, we find no question of law, much less, substantial question of law, in these appeals.

13. In this regard, useful reference can be made to the decision of the Hon'ble Supreme Court in the case of Hero Vinoth Vs. Seshammal [reported in 2006 (5) SCC 545] wherein the Hon'ble Supreme Court explained in paragraph 24 as to what would be a substantial question of law.

If we apply this decision to the facts of this case, the only conclusion that can be arrived at is that no substantial question of law arises for consideration in these appeals.

14. It will be worthwhile to mention that the principles of law applicable to cases under Section 100 of the Civil Procedure Code would equally apply to appeals under Section 260A(7) of the said Act as held by the Hon'ble Supreme Court in the case of M.Janardhana Rao Vs. Jt. CIT [reported in (2005) 273 ITR 50].

15. For all the above reasons, we see no grounds to entertain these appeals. Accordingly, the above tax case appeals are dismissed. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal Madras 'C' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-2, Chennai-34.

3.The Deputy Commissioner of Income Tax, Non corporate, Circle-2, Chennai.

+1cc to Mr.T.N.Seetharaman Advocate SR.No.84680
+2cc to Mr.T.Ravi Kumar, Advocate SR.No.84622

TCA.Nos.515 to 517 of 2017 and
CMP.Nos.12742 & 12743 of 2017

RR(CO)
GN(31/01/2018)