IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mr.Justice K.Ravichandrabaabu

T.C.A.No.598 of 2017
&
C.M.P.No.12968 of 2017

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

Vs.

M/s. Chennai Metro Rail Ltd.,
11/6, Seethammal Road, Alwarpet,
Chennai-600 018. Now at Chennai Metro Depot
Administrative Building, P.H.Road,
(Near Koyambedu Metro Station),
Chennai - 600 107.
PAN : AADCC2233K ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order, dated 05.08.2016 passed in S.A. No 174/mds/2016 in I.T.A.No. 2231/MDS/2016 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, for the assessment year 2011-12 against the proceedings dated 09.03.2016 in C.No 218/3)Pr.CIT-1/263-2015-2016 of the Principal Commissioner of Income Tax, Chennai against the assessment order passed by the Deputy Commissioner of Income Tax, Chennai/Assessment Officer dated 06.03.2014 in PAN No AADCC2233K.

For Appellant : Mr. T.Ravikumar
For Respondent : Mr. M.P.Senthil Kumar

JUDGEMENT

(Judgement of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Mr. T.Ravikumar, the learned Senior Standing Counsel for the appellant, and Mr. M.P.Senthil Kumar, the learned counsel for the respondent/assessee.

2. This Appeal has been filed by the Revenue, raising the following substantial questions of law:-

> "I). Whether on the facts and circumstances of the case the Tribunal was right in staying the operation of the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act ?
>
> II) Is not the finding of the Tribunal bad by holding that the CIT has no power to pass order under Section 263 especially when the appeal against the assessment order is pending before the Tribunal even though the subject matter of order passed under section 263 was not the same or contested before any of the Appellate Authority and therefore it was in violation of Explanation (1) to (c) to Section 263 (1) and is contrary to the Apex Court decision in the case of Jayakumar B Patel 236 ITR 469 and Shri Arbuda Mills Ltd., reported in 231 ITR 50?
>
> III) Whether on the facts and in the circumstances of the case, the order of the Tribunal is proper by staying the order passed under Section 263 by the Commissioner of Income tax especially when the jurisdictional High Court in the case of Sara Enterprises reported in 224 ITR 169 (Mad) on identical circumstances upheld the action of the department?
>
> IV) Whether the reasons and finding of the Tribunal is proper by grating the stay of the operation of the order passed u/s. 263 preventing the assessing officer from making enquiry and passing consequential assessment orders, especially, when as per Explanation (1)(ii) to section 153 excludes only the period during the assessment proceeding is stayed by an order or injunction of any Court and the Tribunal not being a Court, lack inherent jurisdiction?

3. It may not be necessary for us to go into the factual and legal issue raised in this Appeal, as the impugned order passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, (in short, 'Tribunal') is only an order on an application for stay, and the stay was restricted to, for a period of six months from the date of the order, i.e., 05.08.2016, till the disposal of the Appeal, whichever is earlier. The Appeals, in I.T.A.No.2230, 2231and 2232/Mds/2016, have been disposed of by a common order, dated 23.03.2017. As

against the said order, Revenue has preferred |Tax Case Appeal in T.C.A.No.745 of 2017.

4. Thus, in our view, the present Appeal filed by the Revenue has become infructuous, and accordingly, the same is closed, however, making it clear that all the issues, both the factual and legal issues raised by the Revenue in this Appeal can be canvassed in T.C.A. No.745 of 2017. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

msm/sd

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

2. The Principal Commissioner of Income Tax
Ayakar Bhavan, 121 M.G. Road, Chennai 34.

3. The Deputy Commissioner of Income Tax
Ayakar Bhavan, 121 MG Road, Chennai 34.

+1 CC to M/s.T. Ravikannan, Advocate sr 88960.
+1 CC to M/s. G. Baskaran, Advocate sr 88057.

T.C.A.No.598 of 2017

GMI(CO)
SP(22/01/2018)