IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

T.C.A.No.608 of 2017

Principal Commissioner of Income Tax
Central 1,No.108, Mahatma Gandhi Road,
Chennai. .. Appellant

-vs-

M/s.Twenty First Century
Management Services Ltd.,
G3, No.67, Eldams ROad,
Chennai - 600 018. .. Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 09.03.2017 made in I.T.A.No.1470/Mds/2016 on the file of Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, for the Assessment Year 2005-06.
Coming from the Order of the commissioner of Income-Tax (Appeals)-II, dated 17/03/2016, in ITA .No.646/2013-14/CIT(A)-II and preferred against the Assessment Order dated 28/03/2013 on the file of the Assistant Commissioner of Income-tax company circle -III (2), Chennai-34. For the assessment year 2005-06.

For Appellant : Mr.T.R.Senthilkumar



J U D G M E N T
(Judgment of the Court was delivered by T.S.Sivagnanam,J.)



Heard Mr.T.R.Senthilkumar, learned counsel appearing for the appellant/Revenue.

2.This appeal filed by the Revenue is directed against the order passed by the Income Tax Appellant Tribunal (ITAT) in I.T.A.No.1470/Mds/2016 dated 09.03.2017.

3.This appeal has been filed raising the following substantial questions of law:

1. Whether the Appellate Tribunal is correct in law in quashing the notice issued u/s.148 of the Income Tax Act, 1961 on the ground that it lacks of jurisdiction, without considering Explanation 1 and Explanation 2(c) to Section 147 of the Income Tax Act?
2. Whether the Appellate Tribunal is correct in law in holding that the reasons, recorded for reopening of reassessment, were already examined by the Assessing Officer in the order u/s.147 passed on 30.12.2010, whereas no such reasons were recorded for reopening assessment in respect of which order was passed on 30.12.2010?
3. Whether the Appellate Tribunal is correct in law in holding that the Revenue could not establish that the income had escaped assessment due to failure on the part of the assessee, by ignoring the fact that the assessee did not submit correct details of carry forward losses during the course of either assessment u/s.143(3) or subsequent first reassessment u/s.147 of Income Tax Act, 1961?

4.Before we consider the above questions, it would be necessary to take note of the factual background in the matter. The assessee filed an appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals) dated 17.03.2016 for the assessment year 2005-06. This appeal was filed by the assessee challenging an order of assessment dated 28.03.2013 passed under Sections 143(3) r/w. 147 of the Income Tax Act, 1961. In fact the said assessment order is consequent upon the second reopening notice issued to the assessee.

5.We find from the facts that the first notice for reopening was issued virtually on the same ground and the assessee cooperated in the assessment proceedings and the Assessing Officer appears to have been satisfied with the submission and completed the assessment without any additions. Subsequently, there has been a change of officer who has issued the second reopening notice which has ultimately culminated in the assessment order dated 28.03.2013. The petitioner contended that the second reopening of the assessment was a clear change of opinion and therefore illegal. However, the Commissioner of Income Tax (Appeals) partly agreed with the assessee with regard to the submissions made pertaining to the assessment records and therefore allowed the assessee's appeal in part by remanding the matter to the Assessing Officer to examine the submission of the appellant and if it is found to be factually correct, to recompute the income under Section 115JB of the Income Tax Act, 1961. As against the order of the remand, the Revenue did not prefer an appeal to the Tribunal. However, the assessee being aggrieved by the second reopening filed an appeal which has been allowed by the Tribunal which order is being impugned in this appeal.

6.On a careful reading of the order passed by the Tribunal, we find that the Tribunal has done thorough factual exercise and held that the reopening for the second time on the same issue is nothing but change of opinion and is not permissible in law. Furthermore, the Tribunal has specifically recorded that the revenue could not establish that the income has escaped assessment due to the failure on the part of the assessee. Further, this finding recorded by the Tribunal is on re-appreciation of the factual position. Therefore, we find that no question of law much less the substantial questions of law as framed arise for consideration in this appeal. Accordingly, this Tax Case Appeal fails and hence dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income-Tax,
Company circle III (2), Chennai-34.

3.The Assistant Commissioner of Income-Tax,
Company circle III (2), Chennai-34.

+1cc to Mr.T.R.Senthikumar, Advocate SR.No.



T.C.A.No.608 of 2017

NRI(CO)
GN(27/12/2017)