In the High Court of Judicature at Madras

Dated : 12.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.645 of 2017

The Principal Commissioner of
Income Tax 6, No.121,
Nungambakkam High Road,
Chennai-34. ...Appellant/Appellant

Vs

M/s.Sundaram Business Services
Ltd., No.21, Pattullose Road,
Chennai-2. ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.4.2017 made in ITA.No.3006/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'C' for the assessment year 2010-11 against the order of the Commissioner of Income Tax(appeals)15, Chennai 34 dated 06.07.2010 and order in I.T.A. No 452/CIT(A)-15-13-14 and against the office of the Assistant Commissioner of Income Tax Company circle VI(4) Chennai dated 20.03.2013 in PAN/GIR No AAJCS92321 Assessment year 2010-2011.

For Appellant : Mr.S.Rajesh

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is directed against the order passed by the Income Tax Appellate Tribunal dated 13.4.2017 in ITA.No.3006/Mds/2016 for the assessment year 2010-11, raising the following substantial questions of law :

> "i. Whether the Appellate Tribunal was right in directing the Assessing Officer to exclude the investments made from own funds while computing the disallowance under Section 14A of the Income Tax Act, when the assessee was maintaining mixed bag of funds and failed to substantiate that as such investments in assets yielding exempt income

are out of interest free funds ?

ii. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to consider the investments made own funds while computing the disallowance under Section 14A when the Section or Rule 8D does not provide any such exclusion ? iii. Whether the Income Tax Appellate Tribunal was justified in deleting the addition made towards delayed payment of PF/ESI recovered from the employees and remitted after the respective due date under the PF Act ? and

iv. Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal was right and justified in deleting the addition when the sums collected from employees towards PF contribution is income under Section 2(24)(x) of the Income Tax Act and the same can be allowed as deduction under Section 36(1)(va) of the Income Tax Act only if it is paid before the due date under the PF Act?"

2. On a perusal of the order passed by the Tribunal, we find that the Tribunal followed the decision of this Court in the case of CIT Vs. Industrial Security and Intelligence India Private Limited [TCA.Nos.585 and 586 of 2015 dated 24.7.2015].

3. In the grounds of appeal filed by the Revenue, there is no whisper as to why the said decision is not applicable. Further, in the grounds of appeal, the Revenue has not stated that the said decision has been taken on appeal to the Hon'ble Supreme Court. Therefore, we find that the issue raised in this appeal is squarely covered by the decision in Industrial Security and Intelligence India Private Limited, the operative portion of which, as has been noted by the Tribunal, is as follows :

"We find that the Tribunal has rightly relied on the decision of the Supreme Court in the case of CIT Vs. Alom Extrusions Ltd. reported in 319 ITR 306, whereby the Supreme Court held that omission of Second Proviso to Section 43B and Amendment to First Proviso by Finance Act, 2003 are curative in nature and are effective retrospectively with effect from 01.4.1988 and the date of insertion of First Proviso. The Delhi High Court in the case of CIT Vs. Amil Ltd. reported in 321 ITR 508 held that if the assessee had deposited employees contribution towards provident fund and ESI after due date as prescribed under the relevant Act, but before the due date of filing of return under the Income Tax Act, no disallowance could be made in view of the provisions of Section 43B as amended by Finance Act, 2003."

4. Following the same, the above tax case appeal is dismissed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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

2. The Commissioner of Income Tax
   Appeals -15, Chennai 34.

3. The Assistant Commissioner of Income Tax
   Company circleVI(4)
   Chennai.

+1 CC to Ms.T.R. Senthil Kumar, Advocate sr 88404.

TCA.No.645 of 2017

RR(CO)
SP(07/02/2018)