IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

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The Hon'ble Mr.Justice T.S.Sivagnanam

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The Hon'ble Mr.Justice K.Ravichandrabaabu

T.C.A.No.656 of 2017

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C.M.P.No.17299 of 2017

The Principal Commissioner of Income Tax 2,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

...Appellant

Vs.

M/s. ETA General Pvt. Ltd.,
71, Sterling Road,
Chennai - 600 034.
PAN : AAA CE 6650 P.

...Respondent

Prayer:

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order dated 05.10.2016 in I.T.A.No. 473/MDS/2016 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench, for the assessment year 2010-11.

Tax Case appeal filed under Section 360 A of the Income Tax Act 1961, against the Common Order dated 05.10.2016 in ITA No 469/MDS/2016 and C.O. Nos 58 to 63/MDS/2016 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2008-2009, 2009-2010,2010-2011,2011-2012 and C.Os. Nos 58,59,60,61,62 and 63/MDS/2016.

Against: The order of the Commissioner of Income Tax(Appeals)-6 dated 23.12.2015 for the Assessment year 2008-2009, 2009-2010, 2010-2011,2011-2012.

Against: The Assessment order made u/s 143(3) r.w.s 92 CA(3) dated 26.03.2013, 27.03.2014, 20.03.2015, 23.03.2015 for the Assessment year 2008-2009, 2009-2010, 2010-2011, 2011-2012 made PAN NO: AAACE 6650P.

For Appellant :Mr. Karthick Ranganathan,
Senior Standing Counsel for
Mr. T. R. Senthil Kumar

For Respondent :Mr. M.P. Senthil Kumar

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JUDGEMENT

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

Heard Mr. Karthick Ranganathan, the learned Senior Standing Counsel for the appellant, and Mr. M.P. Senthil Kumar, the learned counsel for the respondent.

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

> "i) Whether on the facts and in the circumstances of the case, the ITAT was right in remitting back the issue to the file of the Assessing Officer with a direction to verify the books of accounts of assessee whether the service commission was debited when the sales made and if the assessee charged service commission as soon as the sales were made, the claim of assessee is to be allowed, as it was related to the sales of air conditioners?
>
> ii) Whether on the facts and in the circumstances of the case, the ITAT was right in remitting back the issue, when as per the assessee's own version, it would reserve the service commission after a lapse of three years and this shows that the provision created was a contingent liability and not an ascertained one?
>
> iii) Whether on the facts and in the circumstances of the case, the ITAT was right in remitting back the issue of trade discounts with a direction to ascertain whether the trade discounts was given to the sister concern in the sales bills itself or separate credit been given after the sales had been effected and that, if the separate sales discount was given after the sales, then, the provisions of Section 40 A (2) be applied
>
> and
>
> iv) Whether on the facts and in the circumstances of the case, the ITAT failed to appreciate that the disallowance was made as per explanation to section 37 (1) of the Act for contravention of the Companies Act and the provisions of Section 40A(2)/fair price/Arm's length price have no relevance?

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3. The learned Senior Standing Counsel for the Revenue fairly submits that the questions of law i) and ii) does not arise for consideration in this Appeal, which pertain to the assessment year 2010-11. Therefore, those two questions stand deleted. Therefore, it has to be seen as to whether the Appeal has to be entertained, and whether the substantial questions of law iii) and iv) as framed above, would arise for consideration.

4. The issue pertains to trade discounts, which, according to the Revenue is against the Companies Act, and it is against the public policy. The Income Tax Appellate Tribunal, Madras 'A' Bench, (for short, Tribunal) took note of its intra Court's decision, in the case of Deputy Commissioner of Income Tax Vs. M/s. Power Soaps Pvt Ltd., in I.T.A.No.306/MDS/2015, for the assessment year 2010-11, dated 16.09.2015, which appears to be identical as that of the petitioner's case, and opined that, if the expenditure is debited to the P & L A/c and claim it as an expenditure in computing the income of assessee, provisions of Section 40-A (2) of the Act is applicable. The Tribunal further took note of the submission made on behalf of the assessee that, it is only the deduction in the sales value made to the sister concerns, and it is not claimed as expenditure in the books of account of assessee, and discount was passed by the assessee while making the sale itself, and there is no separate discount claimed by the assessee. This fact was not placed by the assessee either before the Assessing Officer or before the Commissioner of Income Tax (Appeals) and therefore, the Tribunal opined that, it is not in a position to appreciate the findings rendered by the CIT (A) and remanded the matter to the Assessing Officer to ascertain as to whether the trade discount is given to the sister concern in the sales bills, or separate credit has been given after the sales has been effected. Further, the Tribunal pointed out that, if the sales discount is given after the sales, then, the provisions of Section 40-A (2) of the Act should be applied.

5. The Revenue on Appeal before us contended that, this issue was placed before the Tribunal for the first time, and for such reason, the Tribunal ought not to have remitted back the matter.

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6. We do not agree with the stand taken by the Revenue, since the Tribunal, being the last forum, which can appreciate or re-appreciate the factual matrix of the case, was fully justified in taking note of the submission made on behalf of the assessee and the remanding the matter to the Assessing Officer to ascertain the factual position.

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7. Thus, we find that the questions of law iii) and iv) as framed above, does not arise for consideration in this Appeal, at this stage on account of the order of remand, which has been passed by the Tribunal to ascertain the correct factual position.

8. For the above reasons, we are not inclined to entertain this Appeal. Accordingly, this Tax Case Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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

2. The Commissioner of Income Tax(2)121, Mahatma Gandhi Road
Chennai 34.

3. The Deputy Commissioner of Income Tax
Corporate Circle2, Chennai.

4. The Assistant Commissioner of Income Tax
Corporate Circle2(1), Chennai.

+1 CC to M/s. Karthik Ranganathan, Advocate sr 88833.
+1 CC to Mr.G. Baskar, Advocate sr 88915(08/03/2018)

सत्यमेव जयते

T.C.A.No.656 of 2017

PPA(CO)
SP(08/02/2018)

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