In the High Court of Judicature at Madras

Dated : 21.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.703 of 2017

The Commissioner of Income Tax,
Chennai-34. ...Appellant/Appellant

Vs

M/s.Allsec Technologies Ltd.,
Chennai-18. ...Respondent /Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 26.4.2017 made in ITA.No.857/Mds/2016 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2008-09 against the Order, dated 31/12/2015 made in ITA((109)/(IT/(A)-1/2014-15 on the file of the Commissioner of Income Tax(Appeals)-1, chennai against the Assessment Order, dated 28/02/2014 made in GIR/PAN AX-3681/AACCA5103G on the file of Deputy Commissioner of Income Tax, Company Circle-I(1), Chennai for the assesment year 2008-09.

For Appellant : Mrs.R.Hemalatha, SSC(I.T)

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior Standing Counsel for the Revenue.

2. This appeal is directed against the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai in ITA.No.857/Mds/2016 dated 26.4.2017 for the assessment year 2008-09, raising the following substantial questions of law :

> "i. Whether the Tribunal was right in holding that the difference between the market price and the employees stock option

plan was revenue expenditure allowable under Section 37(1) of the Act without appreciating the fact that the difference was only notional loss, which cannot be set off against normal business profit ? and

ii. Whether the reasoning and finding of the Tribunal is proper especially when the employee stock compensation cost is nothing but the differential price at which it was allotted to its employees than the prevailing market value and the assessee has neither incurred any expenditure nor any liability, necessitating the expenditure claim allowable against business profit ?"

3.The Tribunal relied upon the decision of the Hon'ble Division Bench of this Court, to which, one of us (KRCBJ) was a party, in the case of CIT Vs. PVP Ventures Ltd. [reported in (2012) 23 Taxmann.com 286] and dismissed the appeal filed by the Revenue. The special leave petition filed by the Revenue against the said decision was also dismissed by the Hon'ble Supreme Court by order dated 28.3.2014.

4.The learned counsel for the appellant has sought to argue that the dismissal of the special leave petition was a dismissal simplicitor without reasons and that therefore, the Revenue should be allowed to canvass other points before this Court.

5. However, we do not agree with the said submission, as the Hon'ble Supreme Court dismissed the special leave petition by passing the following order :

"In view of the fact that the Revenue had not challenged the order passed by the Tribunal (para 26 of the judgment), the High Court has rightly rejected the revision.

We find no reason to entertain the special leave petition, which is dismissed."

6. On a reading of the said order dated 28.3.2014, it is seen that the Hon'ble Supreme Court had given reasons and rightly dismissed the special leave petition. Therefore, we do not agree with the submission that the dismissal of the special leave petition was a dismissal simplicitor. The questions of law, having already been answered against the Revenue and in favour of the assessee in the case of PVP Ventures Ltd., we are bound to follow the same, which was rightly taken note of by the Tribunal.

7. Accordingly, the above tax case appeal is dismissed and the questions are answered in favour of the assessee and against the Revenue.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Company Circle I(1), Chennai-60 034.

3.The Deputy Commissioner of Income Tax,
Company Circle-I(1), Chennai-34.

+1cc to Mr.T.Ravi Kumar, Senior Standing Counsel Income Tax,
SR.No.91562

TCA.No.703 of 2017

GJ(CO)
GN(18/01/2018)