IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

TAX CASE APPEAL NO.733 OF 2017

FL Smidth Minerals P. Ltd.
(since merged with FL Smidth
Pvt. Ltd.), Chennai-103. ...Appellant

Vs

The Deputy Commissioner of
Income Tax, Chennai Circle-II(1),
Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 18.8.2017 made in ITA.No.1279/Mds/2014 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment year 2003-04 against the Order of the Deputy Commissioner of Income Tax, Company Circle II (1), Chennai - 34, dated 10.03.2006 made in PAN/GIR NO.AAACF 1122D for this Assessment year 2003-04 against the Order of the Deputy Commissioner of Income Tax, Company Circle II(1), Chennai-34, dated 30.03.2010, in PAN AAACF 1122D/03-04 against the order of The Commissioner of Income Tax, (Appeals) II, 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 34, dated 16.01.2014 made in ITA.NO.411 of 2013 - 14.

For Appellant : Mr.M.P.Senthilkumar

For Respondent : Mr.Karthik Ranganathan &
Mr.D.Prabhu Mukundh Arunkumar

Judgment was delivered by T.S.SIVAGNANAM,J

Heard both.

2. This appeal has been filed by the assessee against the order passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 18.8.2017 made in ITA.No.1279/Mds/2014 for the assessment year 2003-04 raising the following substantial questions of law :

"i. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 in respect of the claim of depreciation on the let out property?

ii. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not deleting the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 on account of the claim of depreciation on the let out property, despite the onus cast on the appellant having been discharged with its explanation, being genuine, reasonable and valid ?

iii. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the appellant had furnished inaccurate particulars merely because the appellant had made an incorrect claim in law ? and

iv. Whether on the facts and in the circumstances of the case, the omission of the Assessing Officer to record the reason that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income, the penalty order under Section 271(1)(c) of the Income Tax Act, 1961 is liable to be quashed ?"

3. We have carefully gone through the order passed by the Tribunal, more particularly paragraph 5, wherein the following finding has been rendered by the Tribunal :

"....it is clear that the assessee, on one hand, by admitting the rental income under the head income from house property, has claimed deduction of 30% of the rentals under Section 24(a). At the same time, it has also claimed depreciation on the same let out buildings under Section 32. Thus, there is a double deduction claim, which is not permitted in the Act. Further, the fact of claiming depreciation on the let out buildings has come to the notice of the Assessing Officer only during the course of assessment proceedings. Thus, there is a clear concealment of taxable income, by furnishing inaccurate particulars, on account of claiming depreciation of Rs.4,32,251/- on the let out buildings."

4. The explanation offered by the assessee - appellant was rightly rejected by the Assessing Officer, as confirmed by the Commissioner of Income Tax (Appeals) and the Tribunal. We of the view that no substantial question of law arises for consideration in this appeal.

5. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Income Tax,
Chennai Circle-II(1),Chennai-34.

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

3. The Commissioner of Income Tax (Appeals-II)
121, Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034

+1cc to Mr.G.Baskar, Advocate, S.R.No.92455
+1cc to Mr.Karthik Ranganathan, Advocate, S.R.No.92039

NM(CO)
CS/30/01/18