IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

Coram:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.17333 of 2017

M/S.Amec Foster Wheeler India
Private Limited
Represented by its Authorised signatory
Mr.Venkatrama Katipalla
6th floor, Zenith building
Ascendas IT Park, Taramani
Chennai-600 113.

.. Petitioner

vs.

Deputy Commissioner of Income Tax
Corporate Circle 1(1)
Room No.611, VI floor
Wanarpathy block
No.121, MG road, Nungambakkam
Chennai-600 034.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for records of the respondent in AAACF3204C/AY 2009/10/DC-Co-C-1(1) dated May 23, 2017, quash the same and consequently, direct the respondent to pass orders afresh considering all the material before him with adequate opportunity to the petitioner in accordance with law.

For Petitioner : Mr.N.V.Balaji
For Respondent : Mrs.Hema Muralikrishnan
Standing Counsel
Mr.Naveen Duraibabu
Standing Counsel

O R D E R

Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned standing counsel for the respondent/Department.

2. The petitioner has filed the writ petition challenging the proceedings of the respondent dated 23.05.2017, by which the respondent held that expenses towards the issue of improvement in leasehold premises to the tune of Rs.2,75,29,667/- for the assessment year 2009-2010 is treated as capital in nature as against the claim of the assessee as revenue expenditure and the income of the assessee company for the assessment year 2009-2010 remains unaltered from giving effect order dated 20.05.2016. The petitioner has filed an appeal before the Income Tax Appellate Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals) dated 09.03.2016.

3. As against the very same order, the revenue also preferred an appeal, in which a cross objection was filed by the petitioner/assessee. The Tribunal by its order dated 06.01.2017, remanded the matter with regard to one of the issues for fresh consideration by issuing the following direction:

> "Claim of expenditure is similar to what was claimed by the assessee in A.Y.2008-2009. Hence we are of the opinion that in view of the order of the Tribunal for assessment year 2008-09, issue regarding claim of expenditure on improvement of leasehold asset requires a fresh look by the Id.Assessing Officer. We give similar directions as given for assessment year 2008-09. Appeal of the assessee is treated as allowed for statistical purpose."

4. Pursuant to the above order, the appropriate procedure that should have been followed by the respondent is to put the petitioner on notice, afford an opportunity and then take decision in the matter. However, the respondent has straight away proceeded and passed the impugned order, which is not sustainable, as it is in violation of principles of natural justice.

5. The learned counsel for the petitioner would point out that there is an order of the Tribunal, which has been extracted and the extracted portion is not found in the earlier order. This submission is made to show that the impugned order has been passed without due application of mind and has virtually prejudged the issue.

6. As this Court is convinced that the impugned order passed is in violation of principles of natural justice, the matter requires to be remanded to the respondent for fresh consideration. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration, who shall afford an opportunity to the petitioner and also permit him to file

written objections and take a fresh decision in the matter on merits and in accordance with law. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Deputy Commissioner of Income Tax
Corporate Circle 1(1)
Room No.611, VI floor
Wanarpathy block
No.121, MG road, Nungambakkam
Chennai-600 034.

+1 CC to Mr. N.V. Balaji, Advocate sr 47907
+1 CC to Ms. Hema Muralikrishnan, Advocate sr 47881

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SP(31/07/2017)