IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.02.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL Nos.519 & 520 of 2008

Commissioner of Income Tax,
Chennai .. Appellant in both appeals

Versus

M/s EWS Finance & Investments P Ltd
(formerly EWS Finance & Invt Ltd)
Dhun Building
827 Anna Salai
Chennai 600 002 .. Respondent in both appeals

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai dated 22nd June 2007 passed in I.T.A.Nos.813/Mds/2007 and 814/Mds/2007.

For Appellant .. Mr.T.R. Senthil Kumar

For Respondent .. Ms. Monica chopda
for Mr. K.Harishankar

COMMON JUDGMENT

These Tax Case (Appeals) have been filed by the Revenue calling in question the correctness of the orders passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 22.06.2007 passed in I.T.A.Nos.813/Mds/2007 and 814/Mds/2007 and have been admitted on 03.07.2008 for consideration of the following substantial questions of law:

> *'1. Whether in the facts and in the circumstances of the case, the Tribunal was right in holding that the re-opening to disallow expenditure on exempted income as per sec.14A was bad in law even though no regular assessment had been made in these cases, and the 147 assessment was the assessment for the first time?*
>
> *2. Whether in the facts and in the circumstances of the case, the Tribunal was right in holding that the proviso to Sec.14A would apply where no regular assessment was made, and no refund granted or liability created by any earlier order?'*

2. The issues in these appeals stand covered by the proviso to section 14A of the Income Tax Act, as per which, the assessing authority is not empowered to re-assess in terms of section 147, or pass an order enhancing assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, in respect of any assessment year prior to 1.4.2001.

3. In the present case, the assessment year concerned is 2000-01. As such, the submission of Mr.T.R.Senthilkumar to the effect that the proviso would not apply to a case where an assessment has not been made originally is not acceptable as it would run counter to the spirit and language of the proviso.

4. The departmental appeals are dismissed and Substantial Questions of Law are answered against the Revenue and in favour of the assessee. No costs.

(H.G.R.,J) (A.S.M.,J)
14.02.2017

msr
Index:Yes/No
speaking order/non-speaking order

HULUVADI G. RAMESH.,J
&
DR. ANITA SUMANTH., J.

msr

<u>TAX CASE APPEAL Nos.519 & 520 of 2008</u>

14.02.2017