IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2017

Coram:

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

Tax Case Appeal No.570 of 2008

The Commissioner of Income Tax,
Chennai 600 034 .... Appellant

Versus

M/s. Mohan Breweries & Distilleries P. Ltd.,
158, Anna Salai,
Chennai 600 002 .... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A Bench, Chennai, dated 08.06.2006 passed in I.T.(SS)A No.146(Mds)/2003.

For Appellant ..Mr.T.R.Senthilkumar,
Standing Counsel

For Respondent .. Mr.Vijayaraghavan

JUDGMENT

(Judgment of the Court was delivered by DR.ANITA SUMANTH., J)

The following substantial question of law has been admitted for adjudication arising out of an order of the Income Tax Appellate Tribunal, dated 8.6.2006 in respect of block period 1.4.1989 to 31.3.1999 and 1.4.1999 to 25.11.1999:

'*Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal is right in law in holding that the addition of Rs.1,02,51,361/- representing the unaccounted income in the form of excess cost of construction for the property relating to biomass power plant was not proper on the ground that the additions were not borne out of seized materials?*'

2. An Assessment was made in terms of Section 158BC read with section 143(3) of the Income Tax Act (in short 'Act'), pursuant to a search in the premises of the assessee/respondent on 25.11.1999. The addition made by the Assessing Officer, on account of cost of construction, was based entirely on the reference made to the District Valuation Officer. In appeal before the Commissioner of Income Tax (Appeals) (in short 'CIT(A)'), the addition was deleted on the ground that no incriminating material was found in the course of search to justify the addition, which is a pre-requisite for an assessment in terms of Section 158 BC of the Act. The order of the CIT(A) was confirmed by the Income Tax Appellate Tribunal, vide order dated 8.6.2006.

3. Heard Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the appellant and Mr.Vijayaraghavan, learned counsel appearing for the respondent.

4. The provisions of Section 158BB dealing with the computation of undisclosed income for a block period are categorical to the effect that undisclosed income shall be relatable to material and evidence found as a result of search, and other material or information relatable to such evidence. In the present case, admittedly, there is no material found in the course of search warranting the addition. In view of the admitted position that the addition has been made solely on the basis of a reference to the District Valuation Officer, this in itself, an event that occurred post search, the departmental appeal has no merit.

5. We also take note of the concurrent finding of facts of the appellate authorities to the effect that no incriminating material relating to inflated cost of construction was found in the course of proceedings for search, the addition on this account was unwarranted. We are, in the above circumstances, not inclined to interfere with the order of the Tribunal.

6. The substantial question of law is answered against the Revenue and in favour of the assessee and the appeal stands dismissed. No costs.

(H.G.R., J) (A.S.M., J)
01.02.2017

Index:Yes/No
Internet:Yes/No
msr/sl

HULUVADI G. RAMESH, J.

AND

DR.ANITA SUMANTH, J

msr/sl

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