THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.No.464 of 2016

Date: 28.11.2017

Between:

Principal Commissioner of Income Tax-5,
10th floor, Signature Towers,
Opp.Botanical Garden,
Kothguda, Kondapur,
Hyderabad … Appellant

And

M/s.Someswara Cements & Chemicals Ltd.,
(presently M/s.Vedam Calcimin Limited),
201, Suresh Arcade, 7-1-235/42,
Prashanth Colony, Near Nature Cure Hospital,
Balkampet, Hyderabad-500 016 … Respondent

Counsel for the Appellant : Mr. B.Narasimha Sarma
Senior Standing Counsel
for Income Tax Department

Counsel for the Respondent : Mr.M.Rajkumar

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal by the Revenue is filed against order dated 22.04.2016 in I.T.A.No.1448/Hyd/2014, on the file of the Income Tax Appellate Tribunal (for short 'the Tribunal'), Hyderabad Bench 'A', Hyderabad, whereby it has dismissed the appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-IV, Hyderabad [for short 'the CIT (A)'] pertaining to the assessment year 2005-06.

2. At the hearing, Mr.B.Narasimha Sarma, learned Senior Standing Counsel for Income Tax Department, submitted that the Tribunal has failed to consider the effect of the order of the CIT(A), in deleting income from business under three heads, namely, administrative expenses, amounts written-off and waiver of principal and interest in OTSs from income, and its effect on future assessment years from proper perspective and got swayed away by the mere fact that the assessable income was shown as Nil.

3. We find merit in the submission of the learned Senior Standing Counsel. As could be seen from the assessment order, income under different heads has been computed. This income included the following heads:

1. Administrative expenses
2. Amounts written-off
3. Waiver of principal (sic) and interest in OTS.

4. Thus, the assessing officer has in all, included Rs.7,51,88,939/-, as assessable income and the same was set-off against brought forward business loss of the unabsorbed depreciation. Therefore, the balance income on which tax is to be levied, is shown as Nil. In the appeal filed by the assessee, the CIT (A) has deleted the above heads of income. Feeling aggrieved by the said order, the revenue has filed an appeal before the Tribunal, which has dismissed the appeal, only on the ground that as the balance income was shown as Nil, no tax liability arises on the assessee and, therefore, there was no need to adjudicate the appeal. In addition, the Tribunal also relied upon Circular No.21/2015 dated 10.12.2015 issued by the Central Board of Direct Taxes.

5. As rightly submitted by the learned Senior Standing Counsel, as brought forward losses and unabsorbed depreciation could offset the income assessed by the assessing officer, the tax liability was shown as Nil and, that, if the order of the CIT(A), directing deletion of the income is allowed to become final, the assessee would be able to claim the brought forward business loss and unabsorbed depreciation for future years also, as if the same was not adjusted in heads of income for the assessment year 2005-06. The Tribunal has failed to notice this vital aspect. If the appeal filed by the revenue before the Tribunal was liable to be dismissed on the ground that tax liability was Nil, the appeal filed by the assessee before the CIT (A), was also

equally liable to be dismissed on the same ground. Ironically, the CIT (A) has allowed the appeal filed by the assessee, by delving into the merits of the case. To this extent, the approach of the CIT(A), is correct, as he was not swayed away by the fact that the tax liability was Nil. Applying the same logic and reasoning, the Tribunal should also have disposed of the appeal filed by the revenue, on merits.

6. In the light of the above facts and on the premise as above, the order under appeal is set aside. The matter is remanded to the Tribunal for adjudication of the correctness or otherwise of the order of the CIT (A), on merits.

7. I.T.T.A. is, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 28th November, 2017

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