THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

I.T.T.A.No.48 of 2017

JUDGMENT: (per SK,J)

This appeal by the Revenue under Section 260A of the Income-tax Act, 1961, in relation to the assessment year 2009-10 seeks to raise the following substantial questions of law:

(i) Whether in the facts and circumstances of the case and in law, the ITAT is correct and justified in not accepting the evidence against the assessee in the form of statement by Sri T.Ranga Rao confessing the collection of money from the assessee that was directly relatable to the transactions of M/s.Emmar Hill Township Private Limited and also the confirmation statements by other buyers, which substantiated the Assessing Officer's conclusion on the payment of the extra money by the assessee?

(ii) Whether in the facts and circumstances of the case and in law, the ITAT is correct and justified in setting aside the case following its earlier order of the appellate Tribunal in the case of Mr.G.Mahesh Babu v. DCIT, Central Circle-7 vide ITTA No.256 and 286/Hyd/2015, dated 27.11.2015, especially the case relied on by ITAT itself was not accepted by department & appealed against?

It is however brought to our notice by Ms.K.Mamata, learned senior standing counsel for the Revenue, that the judgment of the Income Tax Appellate Tribunal in G.Mahesh Babu v. DCIT in I.T.A.Nos.256 and 286/HYD/2015 relied upon by the Tribunal in the order under appeal was the subject matter of I.T.T.A.Nos.208 and 226 of 2016 and by common judgment dated 06.01.2017, this Court disposed of the appeals answering the questions of law framed therein in favour of the assessee and against the Revenue.

The learned counsel would state that the only distinguishing aspect on facts between the two cases is that in Mahesh Babu the assessee had asked for an opportunity to cross-examine the witness, while in the present case no such request was made. However, we are of the opinion that the opportunity of cross-examination should be offered in the first instance and it would then be open to the assessee to refuse such an opportunity, otherwise the principles of natural justice would stand violated.

As Ms.K.Mamata, learned counsel, would fairly state that all other issues that arise for consideration stand settled in the light of the judgment rendered by this Court in I.T.T.A.Nos.208 and 226 of 2016, we see no reason to entertain this appeal for adjudication afresh.

The first question of law raised for consideration in this appeal therefore stands answered in terms of the judgment in I.T.T.A.Nos.208 and 226 of 2016 and the second question of law does not need to be addressed in the light of Mahesh Babu having been tested in I.T.A.Nos.256 and 286/HYD/2015.

The appeal is accordingly disposed of. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE GUDISEVA SHYAM PRASAD

Date:13.07.2017

GJ