IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam
and
The Hon'ble Mrs.Justice V.Bhavani Subbaroyan

Tax Case Appeal No. 1327 of 2008

Commissioner of Income Tax,
Chennai. Appellant

Vs.

M/s Pentasoft Technologies Ltd.,
25, 1 Main Road, United India Colony,
Kodambakkam, Chennai - 24.
...Respondent

This Tax Case Appeal is filed under Section 260 - A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "B" Bench Chennai, dated 15.02.2008 passed in I.T.A.No. 216/Mds/2007 for the assessment year 1999-2000 and against the order of the commissioner of Income Tax (Appeal) VI dated 10.10.2006 and made ITA.NO.329/04-05 and against the order of the Deputy commissioner of Income Tax ,Central Circle III(4), Chennai Dated 28.03.2002 in P.A.NO./GI NO.34104 -p for the Assessment year 1999-2000.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.J.Dinesh for Mr.G.Bhaskar

ORDER

This appeal filed by the Revenue, under Section 260-A of Income Tax Act, 1961 (herein after "the Act" for brevity) is directed against the order passed by the Income Tax Appellate Tribunal 'B' Bench in ITA No. 216/Mds/2007, for the assessment year 1999 to 2000.

2.The appeal has been admitted, vide order dated 25.08.2008, on the following Substantial Questions of Law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the commission paid towards the properties taken on lease is revenue expenditure?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest earned on deposits held as margin monies for availing the LC facilities when the assessee had sufficient cash reserves is eligible for on special deduction under Section 80HHE?"

3.When the case was heard by us on 18.09.2018, a memo was filed by the learned counsel for the respondent/assessee stating that the appeal filed by the Revenue cannot be pursued in view of the low tax effect as stipulated in Circular 3/2018, dated 11.07.2018. The memo filed by the respondent/assessee is to the following effect:

> "1. The two issues raised in the Appeal by the Department are:
> a. Allowing Rs. 3,89,600/- being the brokerage paid as revenue expenditure; and
> b. Grant of further deduction under Section 80HHE.
>
> 2. It is submitted that by the order of Assessment, the Assessing Officer had allowed 80HHE of Rs. 2,69,81,026/-. Giving effect to the impugned order, it is now enhanced to Rs. 3,04,67,910/-. The difference is thus Rs. 34,04,67,910/-.
>
> 3. Thus the relief contested in the appeal is thus an aggregate sum of Rs. 38,76,484/-. The tax effect thereon at the rate of 35% is only Rs.13,56,769/-.
>
> 4. The Appeal of the Department is, therefore, not maintainable in view of the Circular No. 3/2018 and hence it is prayed that the appeal be dismissed."

4.On a perusal of the materials placed before us, we find that the facts and figures, as mentioned by the respondent/assessee (in the memo extracted above), appears to be a correct factual position.

5.In the light of the above, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs.

Sd/-
Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

msk/mrm

To

1.Income Tax Appellate Tribunal Madras "B" Bench Chennai

2.The commissioner of Income Tax (Appeal) VI , Chennai 34.

3.The Deputy commissioner of Income Tax,Central cirlcle III (4) , Chennai 34.

+1cc to Mr.N.Muthukumar , Advocate SR.No. 70392
+1cc to Mr.T.Ravi kumar , Advocate SR.No. 69967

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ASK(12/11/2018)