IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

Tax Case Appeal No.1344 of 2008

Commissioner of Income Tax,
Chennai

....Appellant

-vs-

M/s.Titan Properties Ltd.,
3, SIPCOT Industrial Complex,
Hosur - 635 126.

...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 14.03.2008 in ITA No.1849/Mds/2006, for the Assessment year 1998-99.

For Appellant	:	Mr.M.Swaminathan
For Respondent	:	Mr.T.Suryanarayana for M/s.King & Partridge

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the assessee is directed against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 14.03.2008 in ITA No.1849/Mds/2006, for the Assessment year 1998-99.

*2.*Heard Mr.M.Swaminathan, learned counsel for the appellant and Mr.T.Surya Narayana, learned counsel for the respondent.

3.This Appeal has been admitted on 25.08.2008, on the following Substantial Questions of Law:

> *"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the reassessment was only on account of change of opinion?*
>
> *2.Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessee had fully and truly disclosed all material facts?"*

4.The short issue which falls for consideration is as to whether the Tribunal was right in holding that the reopening of the assessment for the year 1998-99 amounted to a change of opinion. We have perused the assessment order dated 11.11.2005 under Section 143(3) r/w Section 147 of the Act and we find that the Assessing Officer has taken all the figures from the Profit and Loss Account filed by assessee along with the return of income, wherein, they have claimed a total expenditure of Rs.11,30,92,666/- and admitted value of work in progress to the extent of Rs.10,61,14,603/-. The Assessing Officer, while completing the assessment under Section 143(3) of the Act vide order dated 07.03.2001, opined that the indirect expenses incurred to the extent of Rs.69,52,063/-, should not be incurred in the work in progress. This, according to the subsequent officer was incorrect. Therefore, re-opening was ordered.

5.The assessee objected to the re-opening by contending that it is a clear case of change of opinion. However, this was rejected and the assessment was completed vide order dated 11.11.2005. On a perusal of this order, we find that the Assessing Officer has come to the conclusion that the correct value of closing stock i.e, work in progress was not adopted. There is absolutely no allegation of any failure on the part of the assessee to fully and truly disclose all material facts for assessment. In the absence of any such allegation, the re-opening of the assessment was a clear case of change of opinion. The order passed by the Tribunal calls for no interference.

6. In the result, the appeal is dismissed. The Substantial Questions of Law are answered in favour of assessee. No Costs.

[T.S.S., J.] & [N.S.K., J.]
13.11.2018

mrm

To

The Income Tax Appellate Tribunal Madras 'D' Bench.

T.S.Sivagnanam, J.
and
N.Sathishkumar, J.

mrm

T.C.A.No.1344 of 2008

13.11.2018