IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE N.SATHISH KUMAR

Tax Case Nos.107 to 109 of 2011

The Commissioner of Income Tax,
Circle XV, Chennai.

.... Appellant

-vs-

M/s.Apex Agencies,
Pottipatti Plaza,
77, Nungambakkam High Road,
Chennai.

... Respondent

Tax Case Appeals filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for brevity 'the Act') are directed against the common order dated 24/09/2010 passed by the Income Tax Appellate Tribunal 'A' Bench Chennai in Miscellaneous Application Nos.89,159,160/Mds/2010 in ITA Nos.1522,1523,1524/Mds/2007 for the assessment years 2000-01, 2001-02, 2003-04 respectively, against order passed by the Assistant Commissioner of Income-Tax, Circle XV, Chennai received by Commissioner of Income Tax (Judicial) on 12/05/10.

For Appellant : Mrs.R.Hemalatha
Learned Senior Standing Counsel

For Respondent : Mr.M.Kaushik for Mr.S.Sridhar

JUDGMENT

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

These Tax Case Appeals are filed by the Revenue under Section 260-A of the Income Tax Act, 1961 are directed against the common order passed by the Income Tax Appellate Tribunal 'A' Bench Chennai in Miscellaneous Application Nos.89,159,160/Mds/2010 in ITA Nos.1522,1523,1524/Mds/2007 for the assessment years 2000-01, 2001-02, 2003-04 respectively.

2.Heard Mrs.R.Hemalatha, the learned Senior Standing Counsel for appellant and Mr.Kaushik, for S.Sridhar the learned counsel for the respondent.

3.This Tax Case Appeal has been admitted on 22.03.2011 raising the following Substantial Questions of Law:

> "(i)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessment order has to be notified or served or despatched within the time limit of one year contrary to Section 153 of the Act?
>
> (ii)Whether on the facts and in the circumstances of the order of the Tribunal is perverse for not considering the material facts that ITMR clearly proves that the assessment order was passed on 31.03.2006 within the time limit of one year?"

4.The Court while admitting the appeal directed these appeals to be listed along with TCA Nos. 1358 to 1360 of 2010 which are the substantive appeals filed by the Revenue challenging the order of Tribunal quashing the re-opening of the assessment for the assessment years under consideration.

5.However, we find that these appeals are directed against the order passed in Miscellaneous Petitions and therefore, we propose to decide these appeals making it clear that regardless of the result of this appeal, the Revenue would be entitled to canvas all issues in TCA Nos. 1358 to 1360 of 2010. The Revenue filed Miscellaneous Petitions before the Tribunal stating that the Tribunal has not considered the order passed by the Tribunal in another case in ITA Nos.1522 to 1524 of 2007 dated 19.01.2010 and also the decision of the Hon'ble Supreme Court in the case of Honda Siel Power Products Ltd., Vs. CIT [reported in (295 ITR 466)], and on account of these, there is an error apparent from the record which requires to be rectified.

6.The Tribunal by the impugned order, dismissed the application and in our considered view, rightly did so. The review sought for, before the Tribunal was a review of the order passed by the Tribunal dated 19.01.2010 which is impermissable. Therefore, whatever contentions the Department had to raise, they should canvas it in the substantive appeal against the order dated 19.10.2010 and therefore, the Tribunal rightly dismissed the Appeal.

7.In the light of the same, we find that no Substantial Questions of Law arises for consideration in these appeals. Accordingly, the appeals are dismissed and it is made clear that, it is open to the Revenue to canvas all issues in TCA Nos. 1358 to 1360 of 2010.

8.In the result, the appeals filed by the Revenue are dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mrm

To

1. Income Tax Appellate Tribunal 'A' Bench, Chennai.

2. Assistant Commissioner of Income Tax, Circle XV, hennai-34.

+1cc to Mr.S.Sridhar, Advocate SR.No.81232

+3cc to Mr.T.Ravikumar, Advocate SR.No.81286

T.C.Nos.107 to 109 of 2011

CP(CO)

GMY(03/01/2019)