

In the High Court of Judicature at Madras

Dated : 13.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.174 of 2011

Commissioner of Income Tax,
Circle XII, Chennai ...Appellant/Respondent

Vs

M/s.South East Construction Co.,
Chennai-92. ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.10.2010 made in ITA.No.742/Mds/2010 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2006-07.

and against the order of Commissioner of Income Tax - IX Chennai-6, dated 10/03/2010 made in C.No. 12/CIT-IX/263/2009-10 and against the Order of the Additional Commissioner of Income Tax, Range-XII, Chennai-6 made in PAN/GIR.No. AAAFT0463 E dated 05/12/2008 Assessment Year 2006-2007.

For Appellant : Mr.M.Swaminathan, SSC
For Respondent : Mr.A.S.Sriraman
for Mr.S.Srithar

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal filed by the Revenue under Section 260A of the Income Tax Act (hereinafter called the Act) is directed against the order passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai (hereinafter called the Tribunal) in ITA.No.742/Mds/2010 dated 29.10.2010 for the assessment year 2006-07.

2. The above tax case appeal is admitted on 25.4.2011 on the following substantial question of law :

"Whether, on the facts and in the

circumstances of the case, the Income Tax Appellate Tribunal was right in law in setting aside the order under Section 263 when the Assessing Officer had not made any enquiry as to whether any capital gains would arise in terms of Section 47(iii) of the Income Tax Act?"

3. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Junior Standing Counsel for the Revenue and Mr.A.S.Sriraman, learned counsel for the respondent - assessee.

4. The short issue, which falls for consideration, is as to whether the Commissioner of Income Tax-9 (for short, the CIT) could have exercised his power under Section 263 of the Act and directed the Assessing Officer to re-examine the facts on record, make enquiries, reframe the issue and recompute the gains, if any, arising under Sections 45, 48, 47(iii) and 50B of the Act.

5. The Tribunal, after taking into consideration the reasons assigned by the Assessing Officer, noted that the Assessing Officer had given a lawful view after considering the details submitted by the assessee, which were in the form of sale documents, allotment of shares, etc. and held that since all the assets and liabilities of the assessee firm were taken over by the company, as per the provisions of Section 47(xiii) of the Act, no capital gains arose in the hands of the partners. The Tribunal further noted that the CIT disagreed with the view taken by the Assessing Officer. Since there were two views possible, the Tribunal held that after considering the factual position, the Assessing Officer adopted one of the courses possible and that therefore, the order passed by the Assessing Officer could not be held to be erroneous or prejudicial to the interest of the Revenue.

6. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. [reported in (2007) 295 ITR 282].

7. We are fully satisfied that the entire matter revolves around the factual dispute, which has been gone into by the Assessing Officer, the CIT and the Tribunal. We find that no substantial question of law arises for consideration. Furthermore, we are also satisfied that the Tribunal had rightly held that the power under Section 263 of the act could not have been invoked by the CIT.

8. Further, a Division Bench of this Court, in the decision in the case of M/s.Agasthiya Granite P. Ltd. Vs. ACIT [TCA.No.450 of 2007 dated 16.4.2018], to which, one of us (TSSJ) was a party, dealt with the phrase 'prejudicial to the interest of the Revenue' under Section 263 of the Act and as to how the Hon'ble Supreme Court directed the said phrase to be interpreted. In the decision M/s.Agasthiya Granite P. Ltd., it

has been held as follows :

"It was further pointed out that every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interest of the Revenue. The Hon'ble Supreme Court, by way of illustration, pointed out that when the income tax officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the income tax officer has taken one view with which the Commissioner of Income Tax does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the income tax officer is unsustainable in law. The fact that the two views existed is evident from the order of reference passed by the Hon'ble Full Bench quoted above. Therefore, the Commissioner of Income Tax could not have invoked the power under Section 263 of the Act, as the income tax officer had adopted one of the two views possible."

9. Thus, for the above reasons, we find that there is nothing wrong in the order passed by the Tribunal and that no substantial question of law arises for consideration.

10. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The Income Tax Appellate Tribuna,
D' Bench, Chennai
- 2.The Commissioner of Income Tax,
Circle XII, Chennai.
- 3.The Commissioner of Income Tax,
IX, Chennai-6.

4.The Additional commissioner of Income Tax,
Range XII, Chennai-6.

+lcc to Mr.S.Sridhar, Advocate, S.R.No. 87092

TCA.No.174 of 2011

CA (CO)
GN (12/02/2019)



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