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.254 of 2011

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

A.V.Thomas Leather & Allied Products Limited,
60, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 105. ... Respondent

Appeal preferred to the High Court against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 31.08.2010 in ITA.No.628/MDS/2009 for the assessment year 2004-05 against the order of the Commissioner of Income Tax, Chennai - 1, Chennai - 34 in C.No.218/CIT-I/42/263/2008-09 dated 23/03/2009 against the order of the Assistant Commissioner of Income Tax, Company Circle I(1), Chennai in PAN/GIR No.AAACA6246K/AX2-046 for the assessment year 2004-2005 dated 15/12/2006.

For Appellant : M/s.R.Hemalatha
Standing Counsel

For Respondent : No appearnace

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JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income Tax Appellate Tribunal Bench 'B', Chennai (hereinafter referred to as "the Tribunal") dated 31.08.2010 in ITA.No.628/MDS/2009 for the assessment year 2004-05.

2.The above appeal was admitted on 03.08.2011 on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in quashing the order of the Commissioner of Income Tax under Section 263 of the Income Tax Act on the ground that the Assessing Officer has adopted one of the views relating to the issue in question, when the Assessing Officer has not applied his mind to the issue at all?"

3.Heard M/s.R.Hemalatha, learned Standing Counsel appearing for the appellant/revenue. Though notice has been served on the assessee in this appeal and their name is printed in the cause list, none appears for the respondent/assessee.

4.The short question which falls for consideration is whether the Commissioner of Income Tax could have invoked his power under Section 263 of the Act and revised the assessment. The assessee's case is that when the Assessing Officer framed the assessment under Section 143(3) of the Act on 15.12.2006, the view taken by him cannot be stated not in accordance with law or stated to be illegal or arbitrary. The Tribunal considered the submissions on either side and held as follows:

> "..... At the point of time when the assessment order was framed, claim of assessee could never be considered unlawful. By the admission of the ld. CIT himself, the issue was only debatable. There were decisions in favour of the assessee which allowed such set off. In our opinion, proceedings u/s. 263 cannot be taken on a debatable issue. An issue which is not free from controversy or is debatable, would not render an order erroneous."

The decision of this Court in the case of CIT Vs. Max India Ltd. [reported in (2007) 295 ITR 282] was relied on by the Tribunal to support the above conclusion.

5.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."

6.The Commissioner has failed to record any specific finding that the twin conditions which are required to be fulfilled for invoking powers under Section 263 of the Act stood fulfilled in the assessee's case. Hence, we find that there is no error in the order passed by the Tribunal. For the above reasons, we find that there is no substantial question of law arising for consideration in this appeal. Accordingly, the appeal fails and dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

cse Sub Assistant Registrar

To

1) The Income Tax Appellate Tribunal Bench 'B', Chennai

2) The Commissioner of Income Tax, Chennai - I,
Room No.701, VII Floor, New Block No.121,
Uthamar Gandhi Road, Chennai - 600 034

3) The Assistant Commissioner of Income Tax,
Company Circle I(1), Chennai

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.87073

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VSNII(CO)
SSM(24/01/2019)