IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

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

Tax Case (Appeal) No.31 of 2011

Commissioner of Income Tax - I
Chennai. ... Appellant / Appellant

-vs-

M/s.Accel Ltd.,
NO.75, Nelson Manickam Road,
Chennai - 600 029. ... Respondent / Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Bench 'C', Chennai, dated 30.07.2010, in MA.No.76/Mds/2010 in ITA 1825/Mds/2008 for the assessment year 2004-05 against the order of the Income Tax Appellate Tribunal, Chennai Bench C, Chennai dated 11/09/2009 in ITA No.1825/Mds/2008 for the assessment year 2004-2005 against the order of the Commissioner of Income Tax (Appeals)-III, Chennai dated 28.05.2008 in ITA No.603/06-07 for the assessment year 2004-05 against the order of the Assistant Commissioner of Income Tax company circle I(1), Chennai dated 6/12/2006 in PAN/GIR No.AX6-061/AAACA3042P for the assessment year 2004-2005.

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

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JUDGMENT

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

This appeal, filed by the Revenue 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 'C', Chennai (hereinafter referred to as "the Tribunal") dated 30.07.2010, in MA.No.76/Mds/2010 for the assessment year 2004.05.

2.The appeal has been admitted by order dated 06.06.2011, on the following substantial questions of law:-

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the Miscellaneous Application filed by the Revenue in respect of the Appellate Order dismissing the Revenue's appeal, pointing out that the Appellate Tribunal had not considered the ground placed by the Revenue in Ground No.2.4 to the effect that the Commissioner of Income Tax (Appeals) had failed to consider the remand report submitted by the Assessing Officer?
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> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not rectifying the mistake of non-consideration of a vital ground of appeal which amounted to a mistake apparent from record even though no fresh facts which were not available before the Tribunal had to be considered?
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> 3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not rectifying its order confirming the deletion of the entire addition of Rs.4,16,12,082/- made by the Assessing Officer treating the said amount as deemed dividend under Section 2(22)(e) by not considering the ground of appeal raised by the Revenue in the appeal?"

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

4.The Tribunal by the impugned order dismissed the miscellaneous application filed by the revenue requesting the Tribunal to rectify the mistake in the order passed by it dated 11.09.2009. The said appeal was filed by the revenue challenging the order passed by the Commissioner of Income Tax (Appeals)-III (hereinafter referred to as "the CIT(A)"), Chennai dated 28.05.2008. The revenue contended that the CIT(A) erred in deleting the addition made by the Assessing Officer towards deemed dividend under Section 2(22)(e) of the Act; that the CIT (A) failed to consider the remand report submitted by the Assessing Officer stating that there are number of transactions appearing on the credit side of the ledger account with a narration 'advance for supplies' and that there have been no such supplies actually made by the assessee to the subsidiary company. Apart from the above, the other grounds were also raised by the revenue before the CIT(A). After considering the rival submissions, the Tribunal by order dated 30.07.2010 dismissed the appeal filed by the revenue and confirmed the order passed by the CIT(A) and the Tribunal has assigned certain reasons for coming to such an conclusion.

5.The revenue filed miscellaneous application to rectify the mistake in the order passed by the Tribunal stating that certain grounds raised by them were not properly considered. The grounds which according to the revenue were not considered is with regard to the remand report submitted by the Assessing Officer. The miscellaneous application once again reiterate certain grounds which we find were the grounds raised before the Tribunal. The Tribunal by the impugned order rejected the application on the ground that there is no error which needs to be rectified and the revenue seeks to re-argue the matter.

6.We are in agreement with the view taken by the Tribunal. The attempt of the revenue is to re-canvas the points which were raised by them before the Tribunal and in the event if the the revenue is of the opinion that the points raised by them were not properly considered, then the remedy is to file an appeal. On a perusal of the order passed by the Tribunal dated 11.09.2009, more particularly, in paragraph 6, we find that the report filed was noticed by the Tribunal. Thus, we are of the considered view that there is no rectifiable mistake pointed out by the revenue before the Tribunal to exercise its jurisdiction under Sub-section (2) of Section 254 of the Act. Hence, we find that there is no error in the finding of the Tribunal and accordingly, the appeal fails and dismissed. Consequently, the substantial questions of law were answered against the revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

cse Sub Assistant Registrar

To
1) The Income Tax Appellate Tribunal Bench 'C', Chennai

2) The Commissioner of Income Tax, Chennai

3) The Commissioner of Income Tax - Appeals(III), Chennai

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

+1 cc to M/s.T.Ravikumar, Advocate, SR No.80608
vba(co)
ssm(18/12/2018) T.C.(A) No.31 of 2011