IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM :

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

Tax Case (Appeal) No.464 of 2011

The Commissioner of Income Tax,
Chennai.

...Appellant

-vs-

M/s.Rathna Stores P Ltd.,
79, Usman Road,
Chennai - 600 017.

...Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai Bench 'C', dated 12.04.2011 in ITA No. 1902/Mds/2010, for the assessment year 2007-08, against the order of the Commissioner of Income Tax (Appeals)-V, Chennai -34, dated 11/08/2010 in ITA No.43/2010-11 for the Assessment Year 2007-2008 against the order of the Incomt Tax Officer(OSD) Company Circle V(3), Chennai dated 30/12/2009 in AACCR7287F for the Assessment Year 2007-2008.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondent : Mr.T.N.Settharaman

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This Tax Case Appeal, filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order of the Income Tax Appellate Tribunal Chennai Bench 'C' ("the Tribunal" for brevity), dated 12.04.2011, in ITA No. 1902/Mds/2010 for the assessment year 2007-08.

2.Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant, and Mr.T.N.Seetharaman, learned counsel for the respondent.

3.This appeal was admitted, on 20.03.2012, on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the addition of Rs.2,12,01,732/- being the disallowance made by the Assessing Officer Section 40(a)(ia) was not proper?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that it was a mistake apparent from the record warranting the deletion of addition of Rs.2,12,01,732/- made by the assessing officer was a rectifiable mistake under Section 154?
>
> (iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of the CIT (A) especially when the assessee had added back a sum of Rs.2,12,01,732/- in its tax computation memo being the amount certified by the auditor under advertising and publicity expenses which was disallowed under Section 40(a)(ia)?"

4.The short issue, which falls for consideration, is whether the Commissioner of Income Tax (Appeals)-V, Chennai (for brevity "the CIT(A)") rightly accepted the Revised Memo and deleted the amount of Rs.2,12,01,732/-, which is added back to the assessee's income.

5.The learned Senior Standing Counsel for the appellant would contend that this contention was never canvassed before the Assessing Officer and therefore, even assuming that the Tribunal confirmed the order passed by the CIT(A), should have remanded the matter to the Assessing Officer.

6.We do not agree with the said contention for the simple reason that before the CIT(A), the authorized representative of the assessee contended that as per the Revised Memo, taxable income should be Rs.61,03,423/- and not as derived by the Assessing Officer in the assessment order.

7.Further, it was stated that the sum of Rs.2,12,01,732/- being disallowance under Section 40(a)(ia) of the Act, has already been considered in arriving at the said amount. The CIT (A), on considering the revised memo, found the same to be an apparent error rectifiable under Section 154 of the Act. Accordingly, rectified the same and allowed the assessee's appeal.

8.The Revenue carried the matter to the Tribunal reiterating the same contentions, which were canvassed before the CIT(A). The Tribunal, after considering the entire factual matrix as well as the reasons assigned by the CIT(A), dismissed the appeal. We find no good grounds to reverse the order passed by the Tribunal.

9.In the result, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm/abr
To

1.The Income Tax Appellate Tribunal Chennai Bench 'C', Chennai.

2.The Commissioner of Income Tax, Chennai.

3.The Commissioner of Income Tax (Appeals)-V, Chennai-34.

4.The Income Tax Officer (OSD) Company Circle V(3), Chennai.

+1cc to Mr.M.Swaminathan, Advocate Sr.83441
+1cc to Mr.T.N.Seetharaman, Advocate Sr.84126

T.C.A.No.464 of 2011

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srg 10/01/2019