IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.09.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.21266 of 2018
and
WMP.No.24936 of 2018

M/s.Gemini Communication Limited
Represented by its Managing Director
Mr.Vijaya Kumar
No.1, Dr.Ranga Road,
Alwarpet, Chennai-600 018. ..Petitioner

Vs

1. The Deputy Commissioner of Income Tax
Office of the DCIT, Corporate Circle 2(1)
Room No.511, V Floor, Wanaparthy Block
Aayakar Bhavan, No.121, Uttamar Gandhi Salai,
Chennai-600 034.

2. The Assistant Commissioner of Income Tax
Corporate Circle 2
Room No.403, IV Floor, Wanaparthy Block
Aayakar Bhavan, No.121, Uttamar Gandhi Salai
Chennai-600 034. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminated in the order dated 24.04.2018 in PAN AAACG2531K/2012-13 passed by the 1st respondent and consequently, the order dated 27.04.2018 passed by the 1st respondent in PAN AAACG2531K/2012-2013 along with its calculation sheets, by the Deputy Commissioner of Income Tax, Corporate Circle 2(1), Chennai, the 1st respondent herein and quash the same and direct the 1st respondent to reconsider allowing the depreciation claim of the petitioner.

For Petitioner : Mr.J.Sivanandaraaj
for Mr.V.Sankaranarayanan

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order dated 24.04.2018, passed by the first respondent and the consequential order dated 27.04.2018 passed by the very same respondent. The petitioner further seeks a direction to the first respondent to re-consider and allow the depreciation claim of the petitioner.

3. The petitioner is an Assessee before the respondents. In respect of the assessment year 2012-2013, the petitioner filed return claiming depreciation on intangible assets and consequently, for refund of tax to the tune of Rs.2,38,13,420/-. The Assessing Officer, by an order of assessment dated 27.03.2015, disallowed the depreciation claim of the petitioner on intangible assets, by giving certain reasons and findings. Challenging the said order of assessment, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority, by order dated 27.07.2016, allowed the appeal in part and remitted the matter back to the Assessing Officer to consider the issue of dis-allowance of depreciation on intangible assets, by giving a direction to the Assessing Officer to appraise the evidences and verify the two confirmations from two companies viz., M/s.Hoteied PTE Limited, Singapore and M/s.Six Rivers Universal SA BVI. The First Appellate Authority also observed that subject to satisfactory verification of the confirmation, the Assessing Officer is to allow the depreciation software as claimed. Consequent, upon the order passed by the First Appellate Authority, as stated supra, the Assesee was called upon to appear before the Assessing Officer and furnish details and evidences for the claim of depreciation on intangible assets. The petitioner sent their reply on 18.04.2018. Thereafter, the Assessing Officer passed the present impugned order dated 24.04.2018, once again, rejecting the depreciation claim and consequently, by disallowing the depreciation.

4. Challenging the above said order and consequential order of the first respondent demanding the payment of tax, the present writ petition is filed before this Court.

5. The learned counsel for the petitioner submitted that the Assessing Officer has not considered the materials placed before him, pursuant to the remand, in a proper and perspective manner. Thus, it is contended by the learned counsel that the Assessing Officer has not, in fact, strictly followed the directions issued by the First Appellate Authority, while remanding the matter, more particularly, with regard to the verification of the confirmation from the above said two companies. Therefore, it is contended that the Assessing Officer has to be directed to re-consider the issue once again.

6. On the other hand, the learned Senior Standing Counsel appearing for the respondents submitted that the Assessing Officer has strictly followed the directions issued by the First Appellate Authority and has dis-allowed the depreciation claim, since the Assessing Officer was not satisfied with such depreciation claim, based on the verification of the confirmation in respect of the above said two companies. Therefore, she contended that there is no illegality or infirmity in the order passed by the Assessing Officer, warranting interference by this Court under Article 226 of the Constitution of India. It is further contended that if the petitioner is aggrieved against the present order, impugned in this writ petition, it is open to them to challenge the same in the manner known to law, before the Appellate Authority, once again.

7. Heard both sides.

8. The petitioner is aggrieved against the dis-allowance of depreciation claim on intangible assets. No doubt that the petitioner has filed an appeal before the First Appellate Authority and challenged the order of assessment in respect of the such dis-allowance. It is also true that the First Appellate Authority has allowed the appeal in part and directed the Assessing Officer to appraise the evidences and verify two confirmations from the said two companies and thereafter, to allow the depreciation software as claimed, provided, the Assessing Officer is satisfied with the verification of the confirmations. Therefore, it is not as though the First Appellate Authority had given a positive direction to the Assessing Officer to accept the case of the petitioner insofar as with regard to the issue of depreciation on intangible assets as such. On the other hand, the order of remand clearly indicates that allowing of the depreciation software as claimed by the petitioner, is subject to the satisfactory verification of the confirmations by the Assessing Officer. Perusal of the order passed by the Assessing Officer, pursuant to the remand, would clearly indicate that the Assessing Officer has dealt with the confirmations from the above said two companies in his order at Paragraph No.3 in detail. The Assessing Officer has also taken note of the fact that for the subsequent assessment year 2013-2014, the very same issue raised by the petitioner was rejected by the First Appellate Authority. When such being the factual findings rendered by the Assessing Officer, the correctness or otherwise of the same has to be tested by the petitioner only before the next fact finding authority viz., the First Appellate Authority. Without doing so, the petitioner is not justified in approaching this Court, by-passing such statutory appellate remedy.

9. Therefore, this Court is not inclined to interfere with the order impugned in this writ petition only on the reason that the petitioner is to avail an alternative remedy of appeal before the Appellate Authority. It is made clear that this Court is not expressing any view on the merits of the contentions raised by the petitioner as well as the findings rendered by the Assessing Officer in the impugned order, since it is for the next fact finding authority viz., the Appellate Authority to consider and decide on the same, on merits and in accordance with law.

10. Accordingly, this writ petition is disposed of, by granting liberty to the petitioner to file an appeal before the First Appellate Authority, within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed by complying with other statutory requirements, the Appellate Authority shall consider the same and pass orders on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

mk

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Income Tax
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2. The Assistant Commissioner of Income Tax
Corporate Circle 2
Room No.403, IV Floor, Wanaparthy Block
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Chennai-600 034.

+1cc to Mrs.Hema Murali Krishnan, Advocate SR.NO.61856
+1cc to Mr.Sankaranarayanan, Advocate SR.NO.61953

MG(Co)
sm:24.9.2018