IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.376 of 2018

M/s.L & T Housing Finance Ltd.,
(formerly known as Indo Pacific
Housing Finance Ltd.,)
Unit Nos.205 & 206, 2nd Floor,
Kodambakkam High Road,
Capital Tower, Chennai-600 034.
PAN: AACW1328G ... Appellant/Appellant

-vs-

The Deputy Commissioner of Income Tax,
Corporate Circle-4(1),
M.G.Road, Nungambakkam,
Chennai-600 034. ... Respondent/Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 10.10.2017 in ITA No.468/Mds/2017 for the assessment year 2011-12 against the Order of the commissioner of Income Tax (Appeals) -8, in ITA.Nos.29/12-13, 93/14-15 & 79/15-16 dated 22.12.2016 and against the Order of the Deputy Commissioner of Income tax Company Circle _ II (3), Assessment Order under section 143.(3) for the Assessment year 2011-12, dated 28/03/2014.

For Appellant : Mr.Sandeep Bagmar.R
For Respondent : Mr.Karthik Ranganathan,
Standing Counsel

J U D G M E N T
[Delivered by T.S.Sivagnanam, J.]

Heard Mr.Sandeep Bagmar.R., learned counsel for the appellant and Mr.Karthick Ranganathan, learned Standing Counsel for the respondent Department.

2.The above appeal has been filed by the assessee challenging the order passed by the Income Tax Appellate Tribunal 'D' Bench Chennai, dated 10.10.2017, in ITA No.468/Mds/2017 for the assessment year 2011-12.

3.The appeal has been filed raising the following two substantial questions of law:-

> "1.Whether the Tribunal's finding that none of the papers in the paper books filed by the Appellant have been referred and not taken on record is a perverse finding and contrary to the facts on record and overlooking the relevant material while upholding the denial of deduction in respect of loss arising on premature termination of securitization agreement on the ground of absence of supporting documents?
>
> 2.Whether on the facts and in the circumstances of the case and in law the Tribunal ought to have held that the Appellant is entitled to claim deduction in respect of loss arising on premature termination of securitization agreement?"

4.After hearing the learned counsels for the parties for a considerable length of time, we do not propose to answer substantial question of law no.2 as framed by the appellant for the reasons set out in the following paragraphs.

5.The appellant's case is that the Tribunal overlooked the paper books filed by the appellant and has not referred nor taken on record those materials, which were placed before the Tribunal.

6.The learned counsel for the appellant / assessee has drawn the attention of this Court to the observations contained in paragraph 6 of the impugned order wherein, the Tribunal has noted that there was no evidence placed by the assessee before the Assessing Officer to substantiate their case nor any documents were placed before the Tribunal.

7.The learned counsel for the appellant would contend that the Chartered Accountants, who had appeared for the assessee before the Tribunal, have evidence to show that paper books were filed and they are duly acknowledged by the Tribunal.

8.Furthermore, the learned counsel submits that the authorised representative of the assessee has filed a miscellaneous application before the Tribunal requesting it to decide the matter on merits by taking into consideration the paper books submitted by the assessee. The said miscellaneous application has been numbered as M.A.No.87/CHNY-2018.

9.Considering the grounds raised and the facts and circumstances of the case and also taking note of the fact that the authorised representative of the appellant has filed an application before the Tribunal, for considering the documents placed, this Court is of the opinion that it is a fit and proper case where the matter is to be remanded for fresh consideration before the Tribunal to be taken up along with the application filed by the authorised representative of the appellant in M.A.No.87/CHNY-2018.

10.As rightly pointed out by the learned Standing Counsel for the Revenue, the second substantial question of law, which has been raised by the assessee, is touching upon the merits of the case.

11.As pointed out earlier, we have not taken up the substantial questions law for consideration, as we are of the considered opinion that the matter requires to be heard afresh after taking note of the documents filed by the assessee.

12.In the result, the tax case appeal is allowed, the impugned order, dated 10.10.2017, is set aside and the matter is remanded to the Tribunal for fresh and to be heard along with M.A.No.87/CHNY-2018. It is made clear that this Court has not made any observation touching upon the merits of the matter to canvass all issues before the Tribunal.

13.The learned Standing Counsel for the Revenue pointed out that it is not automatic that the assessee will be permitted to rely upon the documents in the paper books said to have been filed. In any event, the miscellaneous application is filed by the assessee and it is for the Tribunal to take a decision.

14.In response to the above submissions, the learned counsel for the assessee submitted that adequate grounds have been raised in the appeal before the Commissioner of Income Tax (Appeals) as well as the Tribunal with regard to the merits of the contention, which are sought to be supported by the documents filed in the paper books.

15.The Tribunal is directed to take note of the submissions on either side and take a decision in accordance with law. No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

abr

To

1.The Deputy Commissioner of Income Tax,
Corporate Circle-4(1),
M.G.Road, Nungambakkam,
Chennai-600 034.

2.The Registrar,
Income Tax Appellate Tribunal 'D' Bench Chennai.

3.The Commissioner of Income Tax (Appeals)-8,
Room No.222, Aayakar Bhavan, Main Building,
II Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

4. The Deputy Commissioner of Income Tax,
Company Circle II (3), Chennai-34.

+1cc to Mr.N.S.Nandakumar, Advocate SR.No.49831
+1cc to Mr.Sandeep Bagmar, Advocate SR.No.49539

T.C.A.No.376 of 2018

MR(CO)
GN(21/08/2018)