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.491 of 2018

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

M/s.Soundarya Decorators Pvt. Ltd.,
Plot No.26, Survey No.2 & 3,
Porur Village, Kolathur Post,
Keezhkataiyur, Chennai-600 048,
PAN AAFCS 8646C. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 28.10.2016 in ITA No.539/Mds/2016 for the assessment year 2011-12. Appeal against the order of the Commissioner of Income Tax Appeal dated 05.01.2016 in ITA.No.43/CIT(A)-15/14-15 against the assessment order of the Deputy Commissioner of Income Tax, Company Circle VI 3, Chennai 34, dated 31.03.2014 in PAN/GIR.NO.AAFCS8646C.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

: assisted by Mr.S.Rajesh,
Senior Standing Counsel &

: M/s.K.G.Usha Rani,
Junior Standing Counsel



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

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, assisted by Mr.S.Rajesh, learned Senior Standing Counsel and M/s.K.G.Usha Rani, learned Junior Standing Counsel for the Revenue.

2.This appeal has been filed by the Revenue Challenging the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 28.10.2016 in ITA No.539/Mds/2016 for the assessment year 2011-12.

3.The following substantial question of law has been raised for consideration:-

> "Whether on the facts and in the circumstances of the case the order of the Tribunal was right in directing the assessing officer to consider the claim of prior period expenditure which was not claimed as deduction by way of filing of revised return before the assessing officer, by remitting the case for fresh consideration to the assessing officer without appreciating the ratio of the decision of the Apex Court in the case of Goetze (India) Ltd., reported in 284 ITR 323?"

4.It is a settled legal position that the Appellate Authority as well as the Appellate Tribunal has power to issue directions to consider the claim for prior period expenditure. Therefore, we find that there is no error in the order passed by the Tribunal.

5.From the decision relied on by the learned Senior Standing Counsel for the Revenue in Goetze (India) Ltd. vs. Commissioner of Incom-tax reported in [2006] 157 Taxman 1 (SC), no doubt it is true that the Assessing Officer has no power, but, however, such power is vested with the Tribunal.

6.Hence, we find that the above substantial question of law raised has to be necessarily be decided against the Revenue and in favour of the assessee.

7.Accordingly, the tax case appeal, filed by the Revenue, is dismissed answering the substantial question of law in favour of the assessee and against the Revenue. No costs.



Sd/-
Assistant Registrar(CCC)



//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Income Tax,
Chennai.

2.The Income Tax Appellate Tribunal Madras 'B' Bench.

3.The Commissioner of Income Tax (Appeals)-15,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

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

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.50092

T.C.A.No.491 of 2018

KS(CO)
CS/30/08/18