In the High Court of Judicature at Madras

Dated : 30.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.387 of 2018

M/s.Kaveri Gas Power Ltd.,
Chennai-40

...Appellant/Appellant

Vs

The Deputy Commissioner of
Income Tax/ITO, Corporate Circle-
4(2)/Ward-4(3), Chennai.

...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.2.2018 in ITA No.1848/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench for the assessment year 2010-11.against the order passed by the Commissioner of Income Tax (Appeals)-8 Chennai, dated:30/03/2016 made in ITA.No.27/2012-13 and against the order of the Commissioner of Income Tax, (Appeals)-III, Chennai, Dt.28/02/2013 made in P.A.No.AABCK4793Q and against the order of Additional Commissioner of Income Tax, Company Range-II, Chennai, dt:04/02/2013 PAN./G.I.R.No.AABCK4793Q.

For Appellant : Mr.M.P.Senthilkumar
For Respondent: Mr.Karthik Ranganathan

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. This appeal filed by the assessee is directed against the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai in ITA.No. 1848/Mds/2016 for the assessment year 2010-11. The Tribunal, by a common order in ITA.Nos.1848 and 3200/Mds/2016, dismissed the appeals filed by the assessee by holding that the liability of compensation was unascertainable

and that therefore, it had to be added back to the book profit and by confirming the order passed by the Lower Authority.

3. The appeal has been filed raising 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 law in holding that the provision created for payment of compensation was an unascertained liability and hence, it has to be added while computing 'book profit' under Section 115JB of the Income Tax Act, 1961?
>
> ii. Whether the liability of the assessee to pay compensation has become ascertained immediately on failure of the assessee to supply power to Madura Coats and Agni Steels as per the terms of agreement and only the quantification of such liablity was done later, which do not make the provision made for payment of compensation as unascertainable for the purpose of book profit ? And
>
> iii. Whether the provision made for payment of compensation would be 'unascertained liability' for the purpose of computation of 'book profit', even though the liability of the assessee to pay compensation has become ascertained immediately on failure of the assessee to supply power as per the terms of agreement and only the quantification of such liability was done later?"

4. It appears that the assessee – appellant earlier filed a miscellaneous petition in MP.No.82 of 2018 in ITA.No.1848/Mds/2016 stating that an error had occurred in the order dated 28.2.2018, which is impugned before us. The Tribunal, by order dated 21.8.2018, partly allowed the said miscellaneous petition by remanding the matter to the Assessing Officer to decide the issue afresh in accordance with law after giving a reasonable opportunity to the assessee – appellant. In the light of the order passed by the Tribunal in the miscellaneous petition, nothing survives for adjudication in this appeal.

5. Accordingly, the above tax case appeal is closed. The substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax/ITO,
Corporate Circle, 4(2)/Ward-4(3), Chennai.

3.The Commissioner of Income Tax (Appeals)-8,
Chennai.

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

5.The Additional Commissioner of Income Tax,
Company Range-II, Chennai.

+1cc to Mr.G.Baskar, Advocate, S.R.No.82070

TCA.No.387 of 2018

BS(CO)
GSP(08/01/2019)