IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.12.2018

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

Tax Case Appeal No.561 of 2018

The Commissioner of Income Tax,
Chennai. ...Appellant

-vs-

M/s. Sicgil India Ltd.,
No.84 Anna Salai
Dhun Building, 6th Floor,
Chennai – 600 002. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 15.07.2016 in ITA No.1302/Mds/2011, for the Assessment year 2005-06.

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

For Respondent : Mr.A.S.Sriraman

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal, filed by Revenue under Section 260A of the Income Tax Act, 1961, is directed against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 15.07.2016 in ITA No.1302/Mds/2011, for the Assessment year 2005-06 against the order of Commissioner of Income Tax (Appeals) V, 121, Mahatma Gandhi Road, Chennai-34 for the ITA No. 84/2010-11 dt. 04/04/11 for the assessment year 2005-06 against the order of Assistant Commissioner of Income Tax,Company Circle VI(3) Chennai -34 for the PAN/GIR No.AAACS3767M/Si 4 dt.29/09/10 for the Assessment year 2005-06.

2.This appeal has been filed raising the following substantial questions of law:

> "(i) Whether on the facts and circumstances of the case the Tribunal was right in deleting the proportionate 'other expenses' computed by the assessing officer at Rs.67,96,405/- by following

the apportionment adopted by the assessee between carbon dioxide produced in Goa unit and the total carbon dioxide produced by the assessee while computing the deduction u/Sec. 80IB?

(ii) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating that the assessee itself had admitted that the other expenditures related to goa unit, head office as well as all the other units and perversely assuming that the other expenditure does not relate to goa unit and head office but relates to other units only.

(iii) Whether Tribunal was right in deleting the proportionate expenditure on sales tax and central excise at Rs.2,68,90,135/- by following the apportionment adopted by the assessee between carbon dioxide produced in Goa unit and the total carbon dioxide produced by the assessee while computing the deduction u/Sec.80IB on the ground that the said sales tax and excise duty does not form part of the total turnover?

(iv)Whether on the facts and circumstances of the case the Tribunal was right in reversing the adjustment towards sales tax and excise duty component from the P & L Account of the Goa unit without considering that the products of Goa units were sold in other states and suffered sales tax/Excise duty and same was debited in the P & L Account of the Company?"

3.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the Revenue and Mr.A.S.Sriraman, learned counsel for the assessee and carefully considered the reasons assigned by the Tribunal.

4.The Tribunal with regard to the first and second substantial questions of law, held as follows:

"The assessee has already apportioned the Head Office expenses among all other units including the Goa unit. Therefore, the attempt of the Assessing Officer to apportion the expenditure to the Goa Unit in proportion of carbon dioxide production would definitely reduce the profit of the Goa Unit. Therefore, this Tribunal is of the considered opinion that the CIT(A) has rightly deleted the addition made by the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the CIT(A). Accordingly, the same is confirmed."

5.The finding of the Tribunal with regard to substantial questions of law 3 and 4 is as follows:

> "When one wing of the Central Government considers the cylinder transportation charges as part of the sale consideration, this Tribunal is of the considered opinion that the same has to be treated as part of the sale consideration under the Income-tax Act, 1961 also. In view of the order of this Tribunal in I.T.A.No.1174/Mds/2015 in assessee's own case, the cylinder transportation charges is eligible for deduction u/Sec. 80IB of the Act. This Tribunal do not find any reason to interfere with the order of the CIT (A). Accordingly, the same is confirmed."

6.After hearing the learned counsels for the parties and perusing the materials placed on record and the findings rendered by the Tribunal, we find that the entire issue revolves around the facts, which have been considered by the Tribunal and the assessee's case was accepted. By way of this appeal, filed under Section 260A of the Income-tax Act, 1961, we cannot re-appreciate the evidence. We find no question of law, much less a substantial question of law arises for consideration.

7.Thus, for the above reasons, this appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrm/abr

To

1.Income Tax Appellate Tribunal 'C' Bench, Chennai.
2.The Commissioner of Income Tax, Chennai.
3.The Commissioner of Income Tax(Appeals) V,
121, Mahatma Gandhi Road, Chennai-34.
4.The Assistant Commissioner of Income Tax Company Circle VI(3),
Chennai -34.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.83218

T.C.A.No.561 of 2018

SKV(CO)
rrs 21/01/2019