IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE Mr. JUSTICE N.SESHASAYEE

Tax Case (Appeal) Nos.849 & 850 of 2008

Commissioner of Income Tax,
Chennai ... Appellant in both Appeals / Revenue

..vs..

S & S Power Switchgear Ltd.,
168 Mount Poonamalle High Road,
Chennai 600 096 ... Respondent in both Appeals / Assessee

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the orders of the Income Tax Appellate Tribunal, C Bench, Chennai, dated 31.01.2007, in ITA Nos.1518/Mds/2004 and 1519/Mds/2004, respectively.

For Appellant in both Appeals : Ms. K.G.Usha Rani
For Respondent in both Appeals: Mr.Vikram Vijaya Raghavan, for, M/s. Subbaraya Aiyar Padmanabhan

---

JUDGMENT

(Judgement of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Ms. K.G.Usha Rani, learned counsel appearing for the appellant / Revenue and Mr. Vikram Vijaya Raghavan, for, M/s. Subbaraya Aiyar Padmanabhan, learned counsel appearing for the respondent / Assessee.

2. These Appeals, by the Revenue, are directed against the orders passed by the Income Tax Appellate Tribunal, in ITA Nos.1518/Mds/2004 and 1519/Mds/2004, respectively, dated 31.01.2007.

3. These Tax Case Appeals have been admitted on the following question of law:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the reopening was made on the specific information from the Joint Commissioner of Income Tax, Special Range III, Mumbai, which was not available at the time of original assessment?"

4. The short issue that falls for consideration, in these appeals, is whether the Assessing officer was justified in reopening the assessment, by initiating proceedings under Section 148 of the Income Tax Act, 1961, (in short "the Act") for the assessment years 1995-96 and 1996-97. The assessments were reopened for the two years, by relying upon the letter sent by the Joint Commissioner of

Income Tax, Special Range III, Mumbai, dated 21.01.2000.

5. The Commissioner of Income Tax has, by an elaborate order, allowed the assessee's appeals and set-aside the reopening proceedings on the ground that it is a clear case of change of opinion. This finding has been affirmed by the Tribunal. The Revenue is before us challenging the said common order.

6. The learned counsel appearing for the appellant / Revenue, in both the Appeals, referred to a decision of the Hon'ble Supreme Court in the case of **Income Tax Officer v. Selected Dalurband Coal Company (P) Ltd.,** reported in **(1996) 217 ITR 597 (SC)** to sustain the reopening as done by the Assessing Officer, because the Assessing Officer had information from the Joint Commissioner of Income Tax, Special Range III, Mumbai, with regard to the value of the assets on which the assessee claimed the depreciation.

7. The learned counsel appearing for the respondent / Assessee, in each of the above appeals, sought to sustain the common order passed by the Tribunal and submitted that the Commissioner of Income Tax (Appeals) has done an elaborate

exercise and considered the matter in depth and passed an order on 24.03.2004, which was confirmed by the Tribunal and prayed that the same may be sustained and the Appeals, filed by the Revenue, may be dismissed.

8. We have considered the said submissions made by the learned counsel appearing on either side and carefully perused the materials placed on record.

9. The Commissioner of Income Tax (Appeals), in our view, has, in detail, considered the entire issue and with regard to the validity of the reopening proceedings, recorded the following factual matrix:-

> "5.1.6. Thus, it would be seen that all the basic information that was required to be supplied by the appellant was placed on record before the Assessing Officer. The Assessing Officer had also asked for necessary details during the course of assessment proceedings showing thereby the application of mind by the Assessing Officer on the issue. Out of the above various assets leased, some of the transactions were doubted by the Assessing Officer and certain enquiries were made and certain adverse inference were drawn.

However, in respect of the disputed transaction, the Assessing Officer did not make any enquiries showing thereby the Assessing Officer was satisfied about the genuineness of the transaction. The only information which came in possession of the Assessing Officer subsequent to the completion of the assessment is the letter of JCIT, Special Range III, Mumbai referred to above. As stated earlier, the copy of the letter does not seem to have been placed on record and at least has not been made available to me. Therefore, I am not in a position to comment upon the quality of information contained int he said letter. However, from the reasons recorded by the Assessing Officer, it appears that the JCIT, Special Range III, Mumbai, informed the Assessing Officer that these assets were very old and therefore therefore, their value was NIL. However, no basis of giving the value NIL has been placed on record. This merely seems to be an opinion of the JCIT which cannot be called to be an information.

5.1.7. As stated earlier the Assessing Officer did not have any definite information in possession to show that the value of the assets transferred was NIL. Only some letter sent by one of the Assessing Officers in Mumbai was available with the Assessing Officer to initiate proceedings u/s 148. All the information which the Assessing Officer has used in the assessment order has been gathered by the Assessing Officer during the course of reassessment proceedings from the assessee. The assessee was never confronted with any information that was in possession of the Assessing Officer. Thus, the Assessing Officer made roving enquiries during the course of reassessment proceedings and tried to collect evidence to support his initiation of proceedings u/s 148. This is against the provisions of law. It has been held by the Punjab and Haryana High Court, in the case of Vipan Khanna v. Commissioner of Income Tax and others, 225 ITR 220 that notice u/s 148 cannot be issued for making roving and fishing enquiries. Therefore issuance of notice u/s 148 even on this ground cannot be held to be legal."

10. Apart from the above findings, the Commissioner of Income Tax (Appeals) also considered the merits of the matters and regarding the details called for by the Assessing Officer, after issuance of notice under Section 148 of the Act, as rightly pointed out by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal, the Assessing Officer has attempted to make a roving enquiry in the course of reassessment proceedings and has attempted to collect evidence to support the initiation of proceedings under Section 148 of the Act.

11. Further more, we find that there is no material to show as to how the Joint Commissioner of Income Tax, Special Range III, Mumbai, came to the conclusion that the value of the assets should be determined as NIL. Thus, we find that the impugned reassessment proceedings was a clear case of change of opinion and therefore, the proceedings could not have been initiated under Section 147 of the Act.

12. Thus, for the above said reasons, we find that there is no error or infirmity in the orders passed by the Tribunal. Accordingly, the Tax Case Appeals, filed by the Revenue, are dismissed and the question of law framed is answered against the Revenue and in favour of the Assessee. No costs.

(T.S.S.J.,) & (N.S.S.J.,)
03.04.2018

Index : Yes / No
Web : Yes / No

Speaking Order / Non Speaking Order.
srk

T.S.SIVAGNANAM, J.,
AND
N.SESHASAYEE, J.,

srk

Tax Case (Appeal) Nos.849 & 850 of 2008

03.04.2018