IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HON'BLE MRS. JUSTICE BHAVANI SUBBAROYAN

T.C.(A).No.945 of 2008

Commissioner of Income Tax,
Chennai .. Appellant

Vs

M/s.Boomi Botting Gas Co.P.Ltd.,
648, Anna Salai, Thousand Lights,
Chennai – 6. .. Respondent

Prayer : Tax Case (Appeal) is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 28.12.2007 passed in ITA No.1725/Mds/2006, Assessment year 1995-96.

For Appellant : Mr.T.Ravi Kumar
For Respondent : No Appearance

JUDGMENT

(Judgment of the Court was delivered by
T.S.SIVAGNANAM, J.)

This appeal filed by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal in ITA No.1725/Mds/2006, dated 28.12.2007. This appeal has been admitted vide order dated 16.07.2008 on the following substantial question of law:-
“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the penalty under Section 271(1)(c) of the Income Tax Act is valid?”

2. Heard Mr.T.Ravi Kumar, learned counsel for the appellant. Though notice has been served on the respondent, none appeared for them.
3. The above said substantial question of law arising for consideration has been answered by the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Gold Coin Health Food (P)

Ltd. [(2008) 304 ITR 0308]. The Hon'ble Supreme Court took note of the decisions which were referred by the Tribunal and which were held to be no longer good law. The conclusion in the above said decision of the Hon'ble Apex Court could be summarized as follows:-
“Explanation 4 to s.271(1)(c) intended to levy the penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss; the said explanation being clarificatory is applicable retrospectively.”

4. In the light of the above decision, the finding rendered by the Tribunal by relying upon the decisions in the case of CIT Vs. Prithipal Singh and Co. [(2001) 249 ITR 670] and Virtual Soft Systems Limited Vs. CIT [(2007) 289 ITR 83] is not sustainable as they have held to be no longer good law.

5. Thus, for the above said reasons, the appeal filed by the revenue is allowed and the impugned order is set aside. Accordingly, the substantial question of law framed for consideration is answered in favour of the revenue and against the assessee. No Costs.

(T.S.S.,J) (V.B.S.,J)
05.09.2018

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Index:yes/no

T.S.SIVAGNANAM, J.

AND

V.BHAVANI SUBBAROYAN, J.

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To

Commissioner of Income Tax,
Chennai

T.C.(A).No.945 of 2008

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