IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). No.517 of 2010

M/s.Samalpatti Power Company (P) Ltd., rep. by its Managing Director K.Venkatarao ... Appellant

vs.

The Commissioner of Income Tax,
Company Circle VI (1),
Ayakar Bhavan, 7th Floor,
New Block No.121, N.H. Road,
Chennai - 34. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai dated 22.05.2009 passed in I.T.A.No.350/Mds/2008, against the order dated 14/12/2007 passed in C.No.3033/8/III/06-07 on the file of the Commissioner of Income Tax, Chennai-III, against the order dated 30/11/2005 passed by the Assistant Commissioner of Income Tax Company Circle VI(i), Chennai-34 for the Assessment Year 2003-04.

For Appellant : Mr.R.Venkatavaradan
For Respondent : Mr.T.R.Senthilkumar

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)



The Revenue has filed this appeal by raising the following substantial questions of law:

"1.Whether on the facts and circumstances of the case, the ITAT was right in law in upholding the action of the CIT in invoking the provisions of Section 263 of the Act, especially when the order of the Assessing Officer was neither prejudicial nor erroneous by virtue of the fact that the income of the appellant under normal computation of the Act is eligible for a deduction under Section 80 IA of the Act?

2.Whether on the facts and circumstances of the case, the ITAT was right in commenting on the merits of the issues involving MMD after having come to a conclusion that jurisdiction of the CIT under Section 263 of the Act?

3.Whether on the facts and circumstances of the case, the ITAT was right in law in commenting on the applicability of Section 2(22)(e) of the Act without analysing the fact that the appellant was not a shareholder in CSOPL and having come to a conclusion that the jurisdiction of the CIT under Section 263 of the Act? and

4.Whether on the facts and circumstances of the case, the ITAT was right in law in commenting on the method of computation of capital loss, specifically, where the question before the ITAT was whether the direction of the CIT to examine the issue concerning the land as a capital asset was not erroneous?

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.After hearing the learned counsel for the parties, we are of the view that nothing survives for adjudication in this appeal. It appears that the remand order which is the subject matter of this appeal was proceeded with and the assessment order was passed. The assessee challenged it and succeeded before the Tribunal. The Department has filed an appeal against the order of the Tribunal, which is pending consideration before this Court in T.C.A. No.197 of 2013.

4.In view of the above, this tax case appeal is dismissed. However, we make it clear that the question of jurisdiction under Section 263 of the Income Tax Act, can very well be agitated in the pending application. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
"C" Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai-III, Chennai.

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

4.The Assistant Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Chennai-90.

5.The Director,
Central Board of Direct Taxes,
New Delhi.

+1cc to M/S.T.R.Senthilkumar, Advocate Sr.52668

T.C.(A).No.517 of 2010

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srg 31/08/2018