IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

Coram

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

T.C.(A). No.530 of 2010

Commissioner of Income Tax,
Chennai. .. Appellant

vs

M/s.S.M.Apparels Ltd.,
D-9/1, MMDA Industrial Estate,
Maraimalainagar,
Chennai - 603 209. .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 04.12.2009 passed in I.T.A. No.1474/Mds/2009 APPeal preferred to the high court against order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 04/12/2009 in ITA No.1474/MAS/2009 Assessment year 2001-02 commissioner of Income Tax (Appeals) V Chennai 600 034 ITA No.256/2006-2007 dated 22/07/2008 PAN/GIR No.AAFCS 2097B years of Assessment 2001-02 dated 22.07.2018 Assistant Commissioner of Income Tax Company circle VI (I) chennai-34 Gir.No./PAN/S.23/AAFCS 2097B years of Assessment 2001-02. dated 31.03.2006

For Appellant : Mr.T.R.Senthil Kumar
and Ms.K.G.Usharani

For Respondent : No appearance

JUDGMENT

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

The Revenue has come up with the appeal by formulating the following substantial question of law:

> Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessment order passed consequent to the order of the Commissioner of Income Tax under Section 263 is ab initio void?

2.When the matter is taken up for hearing, learned counsel appearing for the appellant would submit that as against the order passed under Section 263 of the Income Tax Act, 1961, this Court was pleased to set aside the same and remit it back for fresh consideration to the Tribunal. This order being consequential, the same also will have to be set aside.

3.In T.C.(A) No.1527 of 2007 dated 22.02.2016, this Court was pleased to hold as under:

> "8.The question whether the netting off the interest to the tune of Rs.9,47,657.22 was correct or not and the question as to whether the Section 10B computation was right or wrong was not gone into by the Tribunal. If what the Commissioner says is correct, the order of the Assessing Officer was obviously wrong. Therefore, the first requirement under Section 263 of the Act stands satisfied.
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> 9.If on facts what the Commissioner stated was correct that the total taxable income should be more than what is reflected, then the error that crept in to the order of the Assessing Officer, has obviously become prejudicial to the interest of the Revenue. Therefore, the finding of the Tribunal that the twin requirements were satisfied, is completely perverse. Interestingly, the Tribunal has nullified the decision of the Supreme Court in M/s.Malabar Industrial Company Vs. Commissioner of Income Tax (243 ITR 83) and drew a wrong conclusion from the ratio laid down therein.
>
> 10.Therefore, the Tax Case Appeal is allowed and the question of law is answered in favour of the Department. The matter is remitted back to the Tribunal for an order on the merits. No costs."

4.This order being consequential and the earlier order referred supra having become final inter se parties, necessarily the order under challenge will have to be set aside. Accordingly, the order dated 04.12.2009 is set aside and the tax case appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Income Tax Appellate Tribunal,
"D" Bench, Chennai.

Copy to

1.The Assistant Commissioner of Income Tax,
Company circle VI(I) Chennai-34

2.Commissioner of Income Tax Appeal (V)
Chennai-34

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.48247

T.C.(A).No.530 of 2010

VSNII(CO)
GSP(27/08/2018)