In the High Court of Judicature at Madras

Dated : 23.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.824 & 825 of 2018 & CMP.No.20555 of 2018

The Commissioner of Income Tax,
Chennai ...Petitioner in both the T.C.As.

Vs

M/s.Robust Hotels Pvt Ltd
C/o Shri S. Sridhar & A.S.Sriraman,
Advocates, Chennai-20 ...Respondent in both the T.C.As.

APPEALS under Section 260A of the Income Tax Act, 1961 against the order dated 30.11.2017 made respectively in I.T.A.Nos.2296 and 2298/Mds/ 2017 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'A' respectively for the assessment years 2010-11 and 2014-15.

Against the Order dated 30/06/2017 made in ITA.Nos 32 & 77/2016-17/CIT (A) 3 on the file of the Commissioner of Income Tax (Appeals)- 3 for the Assessment year 2010-11 & 2014-15.

Against the Order dated 18/03/2016 & 28/09/2016 made in AADCK5418B on the file of Deputy Commissioner of Income Tax Corporate Circle 5 (2) for the Assessment Year 2010-11 & 2014-15.

For Appellant : Ms. R.Hemalatha, SSC

For Respondent : Mr.A.S.Sriraman



COMMON JUDGMENT

Common Judgment was delivered by T.S.SIVAGNANAM,J

These appeals filed by the Revenue under Section 260A of Income Tax Act, 1961 (for brevity, the Act) are directed against the common order passed by the Income Tax Appellate Tribunal respectively in ITA.Nos.2296 and 2298/Mds/2017 dated 30.11.2017 for the assessment years 2010-11 and 2014-15. The Revenue has filed these appeals raising the following substantial questions of law :

> "i. Whether the Tribunal was right in remitting the issue relating to the additions made under Section 68 by the Assessing Officer on account of share premium received with a direction to the Assessing Officer to examine the matter in respect of method of valuation adopted by the assessee and find out the difference, if any due to the change of method? And
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> ii. Whether the Tribunal was right in not adjudicating the additions made under Section 68 and conditionally remitting the issue back to the Assessing Officer in the light of provisions of Section 56(2)(viib), when the fact remains that the assessee has failed to prove the credit worthiness of the investor and also genuineness of the transaction, which warrant additions as per Section 68? "

2. We have heard Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue and Mr.A.S.Sriraman, learned counsel accepting notice for the respondent assessee.

3. The short issue, which falls for consideration in the instant case, is as to whether the assessee is entitled to the relief under Section 68 of the Act.

4. The learned counsel for the Revenue has relied upon the decision of the Hon'ble Supreme Court in Sumati Dayal Vs CIT [reported in (1995) 214 ITR 0801] and the decision of the Division Bench of this Court in the case of B.R.Petrochem Pvt. Ltd. Vs. ITO [reported in (2017) 98 CCH 0307 Chen HC], which was rendered following the decision in the case of Sumati Dayal.

5. In the said decision, it has been held that Section 68 of the Act enabled assessment of any sum found credited in the books of the assessee where no satisfactory explanation was offered by assessee to explain the same. It has been pointed out that the result of enquiries carried out by the Department should reveal and satisfy transparently all parameters of Section 68 of the Act concurrently.

6. It is the endeavour of the learned Senior Standing Counsel for the Revenue to convince us that the parameters have not been fulfilled concurrently and therefore, the common order passed by the Commissioner of Income Tax (Appeals)-3 [for short, the CIT(A)] dated 30.06.2017 ought to have been confirmed by the Tribunal instead of remanding the matter.

7. We have heard Mr.A.S.Sriraman, learned counsel for the respondent assessee on the above submission.

8. To be noted that before the Tribunal the assessee had placed a paper book containing a bulk of material, which,

according to the assessee, were placed before the Assessing Officer as well as before the CIT (A). Considering the fact that the documents need to be verified, to ascertain as to whether the assessee has cumulatively satisfied the condition under Section 68 of the Income Tax Act, the Tribunal thought fit to remand the matter to the Assessing Officer for re-examination with regard to the method of valuation adopted by the assessee and find out the difference if any due to change of method and thereafter decide the same in accordance with law.

9. In our considered view, there is no error in the common order passed by the Tribunal in remanding the matter and more particularly when the remand is an open remand. By way of abundant caution, we clarify that even assuming that the same finding has been rendered against the assessee either by the Tribunal or by the CIT(A), all those findings stand eschewed and therefore, the Assessing Officer shall consider the matter de novo in terms of the directions issued by the Tribunal .

10. In the light of the above, we find no substantial question of law arises for consideration. Accordingly, these appeals fail and are dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai 'A' Bench.

2.The Commissioner of Income Tax (Appeals) - 3,
Chennai.

3. The Deputy Commissioner of Income Tax,
Corporate circle 5 (2).

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.79825
+1cc to Mr.S.Sridhar, Advocate, S.R.No. 80568

RS/mrn

TCA.Nos.824 & 825 of 2018
and CMP.No.20555 of 2018

RSV(CO)
GN(21/12/2018)