In the High Court of Judicature at Madras

Dated : 03.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.876 of 2018 & CMP.No.21261 of 2018

M/s.TA Taylor Private Limited,
Chennai-20 ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Corporate Circle
3(1), Chennai-34 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 19.7.2018 in ITA No.622/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13, against the order made in ITA.No.111/CIT(A)-11/2016-17 dated 31/01/2017 on the file of Commissioner of Income Tax(Appeals)-11, Chennai for the assessment year 2012-2013, against the order made in ITA.No.199/CIT(A)-11/2015-16 dated 19/02/16 on the file of the Commissioner of Income Tax(Appeals)-10, Chennai, for the assessment year 2012-13 for PAN NO.AAACT4165G.

For Appellant : Mr.Raghavan Ramabadran

For Respondent: Mr.M.Swaminathan, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) is directed against the order passed by the Income Tax Appellate Tribunal (for brevity, the Tribunal), Chennai 'B' Bench in ITA.No.622/Chny/2017 dated 19.7.2018 for the assessment year 2012-13.

2. This appeal has been filed raising the following substantial questions of law :

> "i. Whether, on facts and in circumstances of the case, the Tribunal was right in holding that the consideration of Rs.2,28,87,500/- is to be taxed in

assessment year 2012-13 ignoring the fact that no portion of the aforesaid consideration accrued in the assessment year? And

ii. Whether, on facts and circumstances of the case, the Tribunal was right in not considering the fact that the consideration of Rs.2,28,87,500/- was duly offered to tax in the subsequent assessment year?"

3. The assessee filed their return of income for the assessment year 2012-13 relevant to the financial year 2011-12 on 28.9.2012 declaring an income Rs.16,62,30,620/-; tax liability including surcharge and cess at Rs.3,71,02,436/-; interest under Section 234B of the Act at Rs.4,10,736/-; and again interest under Section 234C of the Act at Rs.1,63,982/-. During the financial year 2011-12, the assessee company entered into a slump sale agreement dated 06.4.2011 with one M/s.Preeti Kitchen Appliances Private Limited to transfer its business on a slum sale basis. In terms of Clause 3.1 of the said agreement, the purchase price was agreed at Rs.18,31,00,000/- and out of the said sum of Rs.18,31,00,000/-, an amount of Rs.2,29,00,000/- was kept in escrow account, which was payable after certain period.

4. For the assessment year 2012-13, the assessee offered only an amount of Rs.16,02,12,500/- to tax. The balance consideration of Rs.2,28,87,500/- was offered to tax only in the assessment year 2013-14, for which, the return of income was filed on 02.9.2013. The assessment proceedings for the assessment year 2012-13 were concluded under Section 143(3) of the Act and an assessment order dated 26.2.2015 was passed. The Assessing Officer held that irrespective of the date of receipt of the sale consideration, the same should be taxed in the assessment year 2012-13 and reworked the total income at Rs.19,25,24,140/-; the tax payable together with surcharge and cess was arrived at Rs.4,30,07,388/-; and interest under Sections 234B and 234C of the Act.



5. As against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for short, the CIT (A)]. However, the Appellate Authority, vide order dated 31.1.2017, confirmed the order passed by the Assessing Officer. The assessee carried the matter on further appeal to the Tribunal, which passed the impugned order rejecting the appeal filed by the assessee.

6. We have heard the learned counsel for the appellant and Mr.M. Swaminathan, learned Senior Standing Counsel accepting notice for the respondent.

7. Admittedly, a part of the consideration received by the assessee was offered to tax for the assessment year 2013-14, the assessee filed their return of income and the tax had been paid. In our considered view, the issues raised in these appeals have become academic, since the question is as to in which year, the assessee is required to be taxed. The Revenue does not dispute that in the subsequent assessment year namely 2013-14, the assessee offered necessary consideration received and paid tax thereon. Therefore, the Revenue is not deprived of collection of appropriate rate of tax. Hence, we may not be required to adjudicate the matter and decide the substantial questions of law raised, as the issues raised in this appeal have become academic.

8. We are supported by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Excel Industries Limited [reported in (2013) 358 ITR 2015] wherein under similar circumstances, the appeals filed by the Revenue were dismissed. The relevant portion of the said judgment reads as follows :

> "Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers."

9. Accordingly, the tax case appeal filed by the assessee is dismissed, as the issues raised have become academic. The substantial questions of law raised are left open. Needless to state that since we have dismissed the appeal, the question of

once again demanding tax from the appellant does not arise, as the issues have become academic and as the consideration has been offered for tax for the assessment year 2013-14 and tax has been paid subject to payment of interest in accordance with law. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Madras 'B' Bench.

2.The Commissioner of Income Tax(Appeals)-11, Chennai.

3.The Assistant Commissioner of Income Tax
Corporate Circle-3(1), Chennai-34.

4.The Commissioner of Income-Tax, Appeals-11,
Chennai-34.

+1cc to Mr.Lakshmi kumaran, Advocate sr.no.82515

TCA.No.876 of 2018 &
CMP.No.21261 of 2018

rsv(co)
nr 03/01/2019