In the High Court of Judicature at Madras
Dated : 11.12.2018

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

Tax Case Appeal No.897 of 2018

M/s.ETA Properties & Investments
Pvt. Ltd., Chennai-4 …Appellant

Vs

The Deputy Commissioner of
Income Tax, Corporate Circle 2(1),
Chennai-34. …Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 03.9.2018 made in ITA No.3440/Chny/2016 on the file of the Income Tax Appellate Tribunal Chennai 'C' Bench for the assessment year 2012-13 against the order dated 24/10/2016 made in ITA No. 129(CIT(A)-6/2015-16 on the file of the commissioner of Income Tax (Appeals)-6, Chennai against the order dated 23/03/2015 made in AAACE3240P u/sec 143(3) of the I.T.Act 1961 on the file of the Deputy Commissioner of Income Tax Corporate Circle -2(1), Chennai.

For Appellant : Mr.M.P.Senthilkumar

For Respondent : Mr.Karthik Ranganathan

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 short, the Tribunal), Chennai in ITA. No.3440/Chny/2016 dated 03.9.2018 for the assessment year 2012-13.

2. The assessee has filed this appeal raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the provision created for payment of compensation to Garbandal Constructions was an unascertained liability not allowable as business expenditure ?

> ii. Whether the liability of the appellant to pay compensation has become ascertained immediately on failure of the assessee to comply with the terms and conditions of contract and only quantification of such liability was done later, which do not make the provision for payment of compensation as unascertainable for considering the same as allowable deduction ? And
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> iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the provision for rental compensation was an unascertained liability not allowable as business expenditure ?"

3. We have heard Mr.M.P.Senthilkumar, learned counsel for the assessee and Mr.Karthik Ranganathan, learned Standing Counsel accepting notice for the Revenue. With consent of the learned counsel on either side, the appeal itself is taken up for final disposal.

4. The short issue, which falls for consideration in the instant case, is as to whether the provision made by the assessee in their return of income filed for the assessment year 2012-13 towards contract loss is an ascertained liability or a contingent liability.

5. The assessee filed their return of income for the assessment year under consideration (2012-13) on 29.9.2012 declaring a total income of Rs.8,54,06,673/-. Subsequently, the case was selected for scrutiny and a notice dated 08.8.2013 under Section 143(2) of the Act was issued. In response to the said notice, the authorized representative of the assessee appeared before the Assessing Officer and filed various details and documents called for. After discussing the case, the Assessing Officer completed the assessment under Section 143(3) of the Act vide order dated 23.3.2015.

6. In this appeal, the issue pertains only to disallowance to the tune of Rs.1,33,41,882/-, which, according to the assessee, was a provision made for contract loss. The assessee created a sum of Rs.1,35,05,446/- as provision for contract loss. The Assessing Officer queried the assessee as to the basis of the same. By letter dated 13.3.2015, the assessee submitted that the provision was created on account of arbitration proceedings filed against the assessee company before this Court and that the said sum was written back in the subsequent years. Therefore, the assessee contended that the said provision is allowable.

7. The Assessing Officer opined that the said provision is only contingent in nature and to support such a conclusion, he recorded that the fact that in the subsequent years, the said provision was liquidated by writing it back, would clearly prove that it is contingent in nature and accordingly disallowed the same. Aggrieved by that, the assessee carried on the matter on appeal to the Commissioner of Income Tax (Appeals)-6, Chennai [for brevity, the CIT(A)], who appeared to have verified the details filed by the assessee and in particular, the break-up of the provision made and held that the provision made is not only with regard to the contractor, but also to various other items and that with regard to the liability vis-a-vis the contractor, it is apparent that the provision has been made on a sound basis and as the work done by the contractor had created an obligation for the assessee, that would require outflow of resources to settle the obligation. The Assessing Officer further opined that the claim made by the contractor presents a reliable estimate.

8. With regard to the rental compensation, which was to be paid to all eligible customers as per the construction agreement on account of delay in handing over the flats, the CIT(A) found that it was acceptable as reliable estimate. Hence, the CIT(A) concluded that the provisions are clearly in the nature of ascertained liability. The CIT(A) drew support from the decision of the Hon'ble Supreme Court in the case of Rotork Controls India (P) Limited Vs. CIT [reported in (2009) 314 ITR 62].

9. Aggrieved by that, the Revenue preferred an appeal to the Tribunal, which appeared to have scrutinized the ledger entries and came to the conclusion that the there were three versions placed by the assessee. The Tribunal also referred to the application filed by the contractor before this Court initiating arbitration proceedings and there is also a reference to the counter claim made by the assessee.

10. Thus, the question to be decided is as to whether the provision made was a real estimate or contingent or whether it could have been made in the assessment year 2012-13.

11. It is contended by the learned Standing Counsel for the Revenue before us that an arbitration award was passed in January 2016 and therefore, the year, in which, the provision could be made, is very crucial.

12. On going through the order passed by the CIT(A), we find that the details furnished by the assessee company were referred to and the break-up details were also culled out in the order passed by the CIT(A). However, it is not clear as to whether those materials were available with the Assessing Officer, which, according to the assessee, were very much available and

were furnished along with the letter dated 13.3.2015. In any event, a remand report could have been called for by the CIT(A) from the Assessing Officer to examine the correctness of the break-up details furnished since, in the letter dated 13.3.2015, there are no clear figures given except to state that the provision was made in the relevant assessment year on account of the arbitration petition filed by the contractor.

13. However, we find that in the said letter, there is also a mention about the amounts, which were written back and offered as income in the subsequent assessment years namely assessment year 2013-14 and 2014-15. There are other details, which appeared to have been enclosed along with the said letter dated 13.3.2015, but they have not been referred to by the Assessing Officer in the assessment order dated 23.3.2015. Therefore, we are of the considered view that a fresh exercise needs to be done by the Assessing Officer by perusing all the documents produced by the assessee and the Assessing Officer should ascertain as to whether the provision made during the relevant assessment year was an ascertained liability or a contingent liability.

14. For the above reasons, the appeal filed by the assessee is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Assessing Officer to verify all the records and decide the question as mentioned above. The substantial questions of law left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax,
Corporate Circle 2(1), Chennai-34.

3.The Commissioner of Income Tax(Appeals)-6, Chennai.

+1cc to Mr.G.Baskar, Advocate, S.R.No.5641
+1cc to Mr.Karthik Ranganathan, Advocate, S.R.No.85892

TCA.No.897 of 2018

GP(CO)
rrs 09/01/2019