IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.01.2019

CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos.47, 48, 50, 53, 55 and 61 of 2019
and
C.M.P.Nos.655, 657, 660, 662 and 670 of 2019
in T.C(A).Nos.48, 50, 53, 55 and 61 of 2019

Commissioner of Income Tax,
Larger Taxpayer Unit,
Chennai. ... Appellant/Respondent in all the Appeals

-vs-

M/s.Royal Sundaram Alliance
Insurance Company Limited,
"Sundaram Towers",
45 & 46 Whites Road, Chennai - 600 002.
PAN: AABCR 7106G ... Respondent/Appellant in all the Appeals

COMMON PRAYER: Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, “A” Bench, Chennai, dated 06.08.2018, passed in I.T.A.No.1622/Chny/2011, I.T.A.No.1625/Chny/2011, I.T.A. No.1663 /Chny/2011, I.T.A.No.1662/Chny/2011, I.T.A.No.1665 / Chny/2011, and I.T.A.No.1623/Chny/2011 for the assessment years 2002-2003, 2002-2003 to 2008-2009 against the order of the Commissioner of Income Tax (Appeals), LTU, Chennai, dated 29/7/2011 in ITA No.44/09-10/LTU(A), ITA.No.45/09-10/LTU(A), ITA No.56/10-11/LTU(A), against the Assessment order of the Assistant Commissioner of Income tax, large Tax prayer Unit, Chennai in GI NO. PAN No. AABCR7106G, dated 04/12/2009, 22/12/2008, 30/11/2010 for the assessment years 2002-2003 to 2008-09.

For Appellant in all the appeals : Ms.V.Pushpa
Senior Standing Counsel
for Mr.M.Swaminathan
Senior Standing Counsel

For Respondent in all the appeals : Mr.Sandeep Bagmar

COMMON JUDGMENT

(Common Judgment was delivered by T.S.Sivagnanam, J.)

These appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), are directed against the orders of the Income-tax Appellate Tribunal, “A” Bench, Chennai, dated 06.08.2018, passed in I.T.A.No.1622/Chny/2011,I.T.A.No.1625/Chny/2011, I.T.A.No.1663 / Chny/2011, I.T.A.No.1662/Chny/2011, I.T.A.No.1665/Chny/2011, and I.T.A.No.1623/Chny/2011 for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2.These appeals have been filed by raising the following substantial question of law:-

> " Whether the Tribunal was justified and correct in holding that reopening of assessment for the Assessment Year 2002-2003 to 2005-2006 in the absence of any tangible material after assessment under Section 143(3) of the Act is not justified?"

3.We have heard Ms.V.Pushpa, learned Senior Standing Counsel appearing for Mr.M.Swaminathan, learned Senior Standing Counsel for the petitioner/revenue and Mr.Sandeep Bagmar, learned counsel for the respondent/assessee.

4.The short issue which falls for consideration in these appeals are the validity of the reopening of the assessment. It would suffice to refer to the reasons for reopening of one of the assessment years and we take up the reasons assigned by the Assessing Officer for the assessment year 2002-2003, which is quoted herein below:

> "M/s.Royal Sundaram Alliance Insurance Company Ltd.
> AY-2002-03
> Reasons for belief that income has escaped assessment
>
> It is found that the assessee has ceded reinsurance premium to the extent of Rs.34,38,40,000/- during the year to the various reinsurers in India and abroad, but the assessee has not made TDS on the re-insurance premium ceded to the Non-residents during the year and the assessee has not provided sufficient evidence to prove that the TDS on the above payment of reinsurance premium has been duly made. Hence, the assessessee has not complied with the provisions of Section 195 of the Income Tax Act. Therefore, the above amount of reinsurance premium ceded outside India by the assessee has to be disallowed u/s. 40

(a)(i) of the Income Tax Act.

Thus, it is clear that the assessee has not disclosed its material facts fully and truly before the assessing officer.

Further reliance also placed on the following decisions of various judicial forums.

1.Following decisions of the Honourable ITAT Chennai

(a) Frontier Offshore Exploration India Limited vs. DCIT (ITA No.2037/Mds/06) for A.Y. 2003-04, ITAT, Chennai)

(b) Poompuhar Shipping Corporation Limited vs. ITO (109 ITD 226)

(c) West Asia Maritime Limited vs. ITO, Hon'ble ITAT-Chennai.

2.Honourable Delhi Tribunal in the case of Van Oordac Jet India P. Ltd. vs. ACIT reported in 112 ITD 79.

3.The Apex Court of the Country in the case of Transmission Corporation of Andhra Pradesh vs. CIT (239 ITR 587)

4.Hon'ble Supreme Court in the case of Commissioner of Income Tax, Punjab vs. R.D.Aggarwal and Company and another (56 ITR 20)

Therefore, I have the reason to believe that the income has escaped the assessment within the meaning of Section 147 of the Income Tax Act."

5.The assessee submitted their objections dated 28.08.2009 and the objections were disposed of by the Assessing Officer vide order dated 08.09.2009. The crux of the objections given by the assessee is as hereunder

"The reasons recorded by your good self, pertain to the allegation that the assessee has failed to deduct tax on payments made to non-resident reinsurers. The deduction of tax on payments is a matter requiring examination during the course of scrutiny assessment under Section 143 (3) of the Act, which in the case of assessee were framed on March 29, 2005 for the A.Y. 2002-03. The information regarding reinsurance ceded was disclosed in explicity in SChedule 1A, 1B and 1C to the profit and loss account and information on foreign currency outgo during the respective years was disclosed in director's report forming part of the financial statements which were filed along with return of income of respective years. Further the tax audit reports for the respective years also contained verifications statement of auditor certifying the compliance by the assessee with TDS provisions.

Having accepted the legal position adopted by the assessee during the course of scrutiny assessment/not having done an independent examination of foreign remittances with respect to compliance with TDS provisions, a fresh examination of the legal proposition on the lines of scrutiny assessment under Section 143(3) , without there being any additional material/evidence been brought on record, is in effect framing a different opinion on the same set of facts, which is impermissible under reassessment proceedings."

6.Apart from raising the above objections, the assessee has placed their submissions as to why the six decisions referred to by the Assessing Officer in the reasons for reopening cannot be applied to the facts and circumstances of the case. The Assessing Officer did not accept the objections raised by the assessee and completed the assessment. On appeal before the Commissioner of Income Tax (Appeals)(CIT(A)), the assessee raised the above referred contentions as well as relied on various decisions. However, the CIT(A) while disposing of the appeal did not elaborate upon the stand taken by the assessee in their objections to the reopening proceedings which in our considered opinion is very vital. This is so because the allegation against the assessee is that the assessee did not disclose the details with regard to the reinsurance ceded to Indian Reinsurance Companies and Foreign Reinsurance Companies. However, the factual position appears to be otherwise because the information regarding reinsurance which was ceded by the assessee to both Indian and Foreign Reinsurance Companies were disclosed explicitly in Schedule 1A, 1B and 1C to the profit and loss account and information on foreign currency outgo during the respective years was disclosed in the director's report forming part of the financial statements which were filed along with return of income of respective years. Further the tax audit reports for the respective years also contained verification statement of auditor certifying the compliance by the assessee with TDS provisions. Thus, when the scrutiny assessment was completed by the Assessing Officer under Section 143(3) of the Act, the information provided by the assessee in the aforementioned schedule to the profit and loss account was perused, the legal position was noted and the assessment was completed and therefore, in our considered view the Tribunal rightly set aside the reopening of the assessment on the ground that there was no fresh material or evidence brought on record and what was done was solely based on change of opinion.

7.Thus, for the above reasons, we find that the order passed by the Tribunal was perfectly valid and legal. In the case of Commissioner of Income Tax vs. United India Insurance Company in

T.C.A.Nos.737 to 740 of 2018 dated 12.11.2018, we have taken a similar decision. Thus, there is no question of law, much less the substantial question of law arising for consideration in these appeals. Accordingly, these tax case (appeals) are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Income-tax Appellate Tribunal,
"A" Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)
Large Tax payer unit,
II Floor, 1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extn,
Chennai -101.

3.The Assistant Commissioner of Income Tax,
Large Taxpayer Unit,
Chennai.

+3ccs to Mr.Sandeep Bagmar, Advocate, S.R.No.4387,4378&4381

T.C.(A).Nos.47, 48, 50, 53, 55 and 61 of 2019
and
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in T.C(A).Nos.48, 50, 53, 55 and 61 of 2019

rrs 14/03/2019