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.40, 56, 57 and 60 of 2019
and
C.M.P.Nos.640, 671, 664 and 667 of 2019

Commissioner of Income Tax,
Larger Taxpayer Unit,
Chennai. ... Appellant
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
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.1624/Chny/2011, I.T.A.No.1627/Chny/2011, I.T.A.No. 1664/Chny/2011 and I.T.A.No.1667/Chny/2011 for the assessment years 2002-2003 and 2008-2009 against the order of the commissioner of Income Tax (Appeals), large Taxpayer Unit, Chennai, dated 29/07/2011 and made in ITA.No.56/10-11/ETU(A), ITA No.58/10-11/LTU(A) against the Assessment order, dated 22/12/2008 and 30/11/2010 and made in GI No./PAN No.AABCR7106G of Assistant Commissioner of Income Tax, Large Taxpayer Unit, Chennai for the assessment years 2002-03 to 2008 - 09.

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

For Respondent : Mr.Sandeep Bagmar

COMMON JUDGMENT

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

These appeals filed by the revenue are directed against the orders of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 06.08.2018, passed in I.T.A.No.1624/Chny/2011, I.T.A.No.1627/Chny/2011, I.T.A.No.1664/Chny/2011 and I.T.A.No. 1667/Chny/2011 for the assessment years 2003-2004 and 2005-2006.

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 is whether the reopening of the assessment was validly done under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The assessee challenged the reopening by filing appeals before the Commissioner of Income Tax (Appeals). The appeals were dismissed on the ground that the details regarding the reserve for unexpired risk (UPR) were not available with the Assessing Officer at the time of original assessment and that the Assessing Officer has not called for the details nor the same were provided by the assessee during the first assessment proceedings under Section 143(3) of the Act. Admittedly, the details pertaining to the reserve for unexpired risk were available in the financials of the assessee. This has not been disputed by the revenue but the reason for reopening is that when the scrutiny assessment was completed under Section 143(3) of the Act, the Assessing Officer did not called for details. As rightly pointed out by the Tribunal, unless there was tangible material available for reopening the assessment, the same cannot be done, especially when the material was very much available with the Assessing Officer when the scrutiny assessment was completed. Therefore, the reasoning given by the Tribunal in paragraph 39 of its order is perfectly legal and valid and the revenue has not brought out any 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

cse

To

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

2.The Commissioner of Income Tax,(Appeals)
Large Taxpayer Unit,
II Floor, 1775, Jawaharlal Nehru Innerring Road,
Anna Nagar West Extn, Chennai-101.

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

+1cc to Mr.M.Swaminathan, Advocate, SR.No.4665
+2ccs to Mr.Sandeep Bagmar, Advocate, SR.No.4379 & 4380

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and
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GJ(CO)

rrs 14/03/2019