IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).No.37 of 2009

M/s.Covansys (India) P.Ltd.,
Unit 13, Block 2, SDF Buildings,
Madras Export Proceeding Zone,
Tambaram,
Chennai-600 045. .. Appellant

..Vs..

The Assistant Commissioner of Income-tax,
Company Circle 1 (3),
121, Nungambakkam High Road,
Chennai-600 034. .. Respondent

Prayer : Tax Case (Appeal) is filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 14.05.2008 passed in I.T.A.NO.1357/MDS/2007 for the Assessment Year 2002-03 and against the order of Commissioner of Income Tax, Chennai 22.03.2007 made in C.No. 218(17)/CIT-1/263/2006-2007 for the assessment Year 2002-2003 and against the Order of the Assistant Commissioner of Income Tax Company circle - I (3), Chennai, in PAN.No. AAACC1351/M/CX4-149, for the assessment year 2002-2003.

For Appellant : Ms.Mallika Srinivasan

For Respondent : Mr.T.Ravi Kumar
Senior standing counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Assessee has filed this Appeal under Section 260 A of the Income Tax Act, 1961 raising the purported Substantial Questions of law, arising from the order of the Income Tax Appellate Tribunal dated 14.05.2008,whereby the learned Tribunal dismissed the Appeal of the Assessee for the Assessment Year 2002-2003.

2. This Appeal was admitted by a Co-ordinate Bench of this Court on 06.03.2009 on the following substantial Questions Of Law:

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the appellant's contention that the provisions of Section 263 of the Income Tax Act are applicable to the assessment made under Section 143 (3) of the Income Tax Act in respect of Assessment Year 2002-03?
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> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not holding that when the expenditure is incurred in foreign currency is excluded from the "export turnover" based on the principle of parity, the same should also be excluded from "total turnover" for the purpose of computing the exemption/deduction under Section 10B?
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> 3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in sustaining the disallowance made under S.14A?"

3. The Income Tax Appellate Authority upheld the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961, revising the original assessment order and directing the Assessing Authority to pass fresh orders on the following two issues:

(i) For the computation of deduction under Section 10(B) of the Act.
(ii) The disallowance of the expenses under section 14 A relatable to Dividend income exempted under the provisions of the Act.

4. The relevant portion of the order passed by the learned Tribunal is quoted below for ready reference:

> "17.We heard both sides in detail and went through the assessment order as well as the order of the Commissioner of Income Tax passed under Section 263. When we have gone through the assessment order, we find that the Assessing Authority has not made any discussion on the claim of deduction made by the assessee under Section 10B

which amounted to crores of rupees. The claim made by the assessee under Section 10B is Rs.24... The Assessing Officer has not made any discussion on this point in his order. It is true that the assessment was completed under Section 143 (3) and the Assessing Authority has called for details and explanations on number of points and the assessee had submitted such details from time to time for the consideration of the Assessing Authority. But that does not mean that the Assessing Authority has applied his mind in a proper manner in so far as the major point involved in the assessment concerned. It is true, generally speaking, the Assessing Authority may discuss only those points in detail which are likely to be held against the assessee and no detailed discussion woud be made in matters to be decided in favour of the assessee. This is a general Rule. But no rule is without exception. Here, the Assessing Authority was dealing with an item excluded from the total income under Section 10B which itself is a very important issue. Coupled with the legal character of the claim, it is also pertinent to note that the quantum deduction claimed by the assessee was huge. Therefore, as a revenue authority, it was the legitimate duty of the Assessing Authority to discuss the matter in an explicit manner in the assessment order so that higher authorities are capable of concluding whether the Assessing Atuhotiry has applied its mind in a lawful manner or not. As far as the present case is concerned, the assessment is drawig a blank.

18. Non-consideration of essential points in an assessment order which might come out of non application of mind definetely makes an assessment order erroneous. As the amount involed is very high, the error is definitely

prejudicial to the interest of the Revenue. The error of non application of mind in the present case is not divested of revenue implication. Therefore, it is necessary to state that the error of non application of mind committed by the Assessing Authority in the present case has made his order prejudicial to the interest of the Revenue.

19. Without going into the merits of the case that one or more views are possible on the question of adjustments to be made in respect of export turnover vis-a-vis total turnover in the context of Section 10B, the above mentioned non-application of mind by the Assessing Authority itself is sufficient to hold that the assessment order is erroneous and prejudicial to the interest of the Revenue. On this short ground itself we find that the contentions advanced by the assessee are liable to be dismissed.

20. Regarding application to Section 14A, again we have to state that the Assessing Authority has not applied its mind in realistic manner. The only explanation offered by the assessee was that it had not incurred any directe expenditure in earning the dividend income. The expression "direct expenditure" is an expression of accounting convenience. The absence of direct expenditure does not mean that no expense attributable to the earning of dividend income was incurred by the assessee. As accountancy is not exact science, the Concepts and Rules relating thereto are codified under convenient heads like Capital Expenditure, Revenue Expenditure, Direct Expenditure, Indirect Expenditure etc., etc. But, the above stated classification alone does not determine the incurring or otherwise of a particular expenditure which has substantially to do something with an

> event in the business of carried on by the assessee and income earned therefrom. In the present case, the assessee has earned substantial amount of divident income. Therefore, it was the duty of the Assessing Officer to verify whether the assessee had incurred any expenditure attributable to earning of such income and if so, whether that would attract the provisions of law containing in Section 14A. Therefore, on this point also we find that the order of the Assessing Authority is erroneous and needless to say prejudicial to the interest of the Revenue as the error directly goes to disallowance or expenditure.
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> 21. Therfore, in the facts and circumstances of the case, we find that the revision order passed by the Commissioner of Income Tax is justified in law and the Assessing Authority has to execute his order in accordance with law."

5. The learned counsel for the Assessee Ms.Mallika Srinivasan informed this Court that the Assessing Authority has passed the order on 12.08.2011, giving effect to the Section 263 order of the learned CIT (A) and insofar as deduction under 10B is concerned in favour of the assessee, but under Section 14 A, has held the issue against the Assessee and ordered disallowance to the extent of 2% thereof at Rs.12,43,618/-.

6. Though the learned counsel for the assessee tried to make some submission on the merits of the case like the challenging on the validity of the order passed under Section 263 of the Act, however, we are satisfied that the learned Tribunal has passed the order u/s 263 of the Act holding that the order passed by the Assessing Authority exhibits non application of mind and, therefore, this Court being satisfied with the order passed by the Tribunal, at this stage, is not inclined to go into the merits of the contentions raised with regard to the order passed u/s 263 of the Act. The Assessee would be free to raise contentions on merits for issue under Section 14 A of the Act in appropriate appellate forum, in accordance ith law.

7. Accordingly in our opinion, this Appeal of Assessee has become infructuous, in view of later development and therefore Questions of Law framed are not required to be answered.

8. In the result, this Tax Case Appeal stands dismissed as infructuous. No order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Arr

To

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

2.The Commissioner of Income Tax,
Chennai.

3.The Assistant Commissioner of Income Tax,
Company circle 1 (3),
121, Nungambakkam, High Road,
Chennai - 34.

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No. 25917
+1cc to Mr.N.Muthukumar, Advocate, S.R.No. 26217

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MR(CO)
GN(07/05/2019)