IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.3033 of 2010
and
M.P.No.1 of 2010

M/s.Ponni Sugars (Erode) Ltd.,
Rep. by its Managing Director,
Sri N.Ramanathan,
ESVIN House,
13, Old Mahabalipuram Road,
Seevaram Village, Perungudi,
Chennai - 600096. ...Petitioner

Vs

1. Assistant Commissioner of Income Tax,
   Company Circle V(1),
   121, Nungambakkam High Road,
   Chennai - 600034.

2. Commissioner of Income Tax,
   Chennai III,
   121, Nungambakkam High Road,
   Chennai - 600034.

3. Commissioner of Income Tax (Appeals) V,
   121, Nungambakkam High Road,
   Chennai - 600034.

4. Income Tax Officer (OSD),
   Company Circle V(2),
   121, Nungambakkam High Road,
   Chennai - 600034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records in C.No.3033/6/III/2006-07 dated 27.01.2009 on the file of the 2nd respondent and quash the same and directing the 2nd respondent to admit and allow the revision petition u/s 264 of the Income Tax Act in respect of assessment year 2003-04.

For Petitioner : Mr.N.Muthukumar

For Respondents: Mrs.Hema Muralikrishnan,
Standing Counsel for IT Dept.

O R D E R

The impugned order has been passed rejecting the petitioner's application that it is not maintainable, in view of the expression of Section 264(4)(c) of the Income Tax Act, which prohibits the Commissioner from revising any order, where the order has been made the subject matter of appeal to the Appellate Tribunal.

2. It is the grievance of the petitioner that the issue for which the revision is sought for under Section 264 is not a subject matter of appeal before the Commissioner of Income Tax (Appeals) for the assessment year 2003-04 and therefore, on a different point, the same could be maintained.

3. I am not in acceptance with such a submission made. As observed by the Assessing Officer, irrespective of whether the point in revision had been considered by the Assessing Officer or not, so long as the assessee has filed an appeal before the Appellate Authority against the Assessing Officer's order, the same cannot form subject matter of revisionary proceedings under Section 264. This point has been sustained in various decisions including a decision of Division Bench of this Court in 1998 (100) Taxman 393 (Mad.) in the case of Reiter Machine Works Ltd. vs. Commissioner of Income Tax. It is also not in dispute that the issue is now pending in W.P.No.4542 of 2018 before this Court for the assessment year 2003-04. As such, I do not find any infirmity in the impugned order of the Assessing Officer.

4. Accordingly, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

hvk

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1. Assistant Commissioner of Income Tax,
Company Circle V(1),
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Chennai - 600034.

2. Commissioner of Income Tax,
Chennai III,
121, Nungambakkam High Road,
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121, Nungambakkam High Road,
Chennai - 600034.

4. Income Tax Officer (OSD),
Company Circle V(2),
121, Nungambakkam High Road,
Chennai - 600034.

+1cc to Mr.N.Muthukumar, Advocate, SR.No.62633/19
+1cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.62092

W.P.No.3033 of 2010
and
M.P.No.1 of 2010

Kak(12/09/2019)