IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.244 of 2011

Commissioner of Income Tax-I
Chennai. .. Appellant

-vs-

M/s.Baghmar Finance Ltd
No.49 (Old No.41)
Erulappan Street
Chennai- 600 049. .. Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai Bench 'D', dated 13.01.2011 in I.T.A.No.1930/Mds/2010 for the assessment year 2007-08 against the order of the Commissioner of Income Tax (Appeals)III, Chennai order dated 09.08.2010 made in I.T.A.No.135/2009-2010/A-III for the Assessment year 2007-2008 and against the order of the Assistant Commissioner of Income Tax, Company Circle i(3) Chennai 34 order dated 15.10.2009 made in GIR/PAN.No.AACB35972 for the assessment year 2007-2008.

For Appellant : Mrs.R.Hemalatha,
Senior Standing Counsel

For Respondent: Mr.A.S.Sriraman

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order passed by the Income Tax Appellate Tribunal Chennai Bench 'D' (for brevity “the Tribunal”), dated 13.01.2011 in I.T.A.No.1930/Mds/2010 for the assessment year 2007-08.

2.The above appeal has been admitted, vide order dated 04.07.2011, on the following substantial questions of law:-

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that assessee company was the owner of the asset and was entitled to depreciation of Rs.3,87,06,802/-?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the transfer of windmill to the assessee by which the assessee's claimed ownership, was a genuine transaction?

3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the cost of one windmill has to be allocated on pro rata basis out of total cost of about Rs.81 crores allegedly incurred by M/s.Surana Industries Ltd.,?"

3.We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant; and Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee.

4.The Tribunal, while dismissing the appeal filed by the Revenue and confirming the order passed by the Commissioner of Income Tax (Appeals)-III, Chennai, (for brevity "the CIT(A)") dated 09.08.2010, followed the assessee's own case for the assessment year 2006-07 in I.T.A.No.1368/Mds/2009.

5.Before the Tribunal, the Revenue contended that the said decision of the Tribunal, for the assessment year 2006-2007, has not attained finality, as the Revenue are in the process of filing appeal before this Court under Section 260A of the Act. Nevertheless, the Tribunal held that this Court having not passed any orders reversing the common order passed by the Tribunal in the assessee's own case, followed the said order and dismissed the appeal filed by the assessee.

6.We have heard this appeal on two earlier hearings and since the order of the Tribunal was an order following its earlier order, we were inclined to list this appeal along with the appeal filed by the Revenue against the order passed by the Tribunal for the assessment year 2006-2007, dated 23.04.2010. However, the learned counsel on either side submitted that they will produce the copy of the order passed by the Tribunal, dated 23.04.2010, and argue as to the correctness of the said order and the Court may test the same to arrive at a decision.

7.By consent, the said procedure was adopted and accordingly, We heard the appeal today. The order passed by the Tribunal in the assessee's own case for the assessment year 2006-07, dated 23.04.2010, was placed before us. The Assessing Officer, while completing the assessment, vide order dated 15.10.2009, under Section 143(3) of the Income Tax Act, 1961, held that the assessee will not be entitled for depreciation on the windmill, as the Assessing Officer disbelieved the transaction to be one of purchase of 80% shares in the windmill and held that the transaction is only a finance transaction, certain reasons were assigned by the assessing officer to term the transaction as a 'sham transaction' to justify its decision to deny depreciation.

8.When the matter was taken up on appeal by the first appellate authority, namely, the CIT(A), the CIT(A) had followed the order passed for the assessment year 2006-07 and allowed the assessee's appeal. The Revenue filed appeal to the Tribunal against the order passed for the assessment year 2006-07. This appeal was dismissed by order dated 23.04.2010.

9.We have perused the said order passed by the Tribunal and we find that the Tribunal has analysed the entire transactions in great depth to confirm the order passed by the CIT(A), had analysed the business prudence and found that no businessman doing finance would lend money to earn such a low interest even assuming that the assessee is able to get the benefit of depreciation at 100% which would result in reduction of the income of the assessee in the present case over a period of two years by Rs.8.10 Crores.

10.Further, the Tribunal observed that it would be of no benefit to the assessee, insofar as when the windmill is sold at any point of time the windmill will be depreciated asset and the income would be taxable as a short term capital gain due to the applicability of Section 50 of the Act. Further, the Tribunal noted that the existence of the windmill was not disputed by the Revenue and the payment by M/s.Surana Industries Ltd., to the assessee in regard to the quantum and the method of computation of quantum was also not disputed. Further, it analysed every attendant facts and circumstances, and rejected the stand taken by the Assessing Officer that the transaction was a 'sham transaction'.

11.We find that the order passed by the Tribunal is a well reasoned order taking into consideration the facts and circumstances. In fact, the Tribunal had re-appreciated the factual position, which was considered by the CIT(A).

12.Thus, in our considered view, no substantial question of law arises for consideration in the present appeal. Accordingly, the appeal filed by the Revenue is dismissed. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

abr

To

1.The Income Tax Appellate Tribunal Chennai Bench 'D'.

2. The Commissioner of Income Tax Appeals III
121, Mahathma Gandhi Road, Chennai 34.

3. The Assistant Commissioner of Income Tax
Company Circle 1(3) Chennai 34.

4. The Commissioner of Income Tax I
Chennai,

+1 CC to Mrs.R.Hemalatha, Advocate sr 7898.
+1 CC to Mr.S.Sridhar, Advocate sr 7822.

T.C.(A) No.244 of 2011

CP(CO)
SP(11/03/2019)