IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2019
CORAM:
THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Tax Case Appeal Nos.304 and 305 of 2011

The Commissioner of Income Tax,
Chennai .... Appellant in both Appeals

-vs-

M/s.Arihant Foundations & Housing Ltd.,
Ankur Manor,
1st Floor, 271 (OLd No.182)
Poonamallee High Road,
Kilpauk, Chennai - 600 010. ... Respondent in both Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 15.12.2010 in ITA Nos.1165 and 1166/Mds/2009 for the assessment years 2004-05 and 2005-06 respectively against the order of the Commissioner of Income Tax (Appeals III) Chennai dated 14.01.2011 in I.T.A. Nos. 147/09-2010/ A.III, I.T.A. No. 144/09-10-A.III for the assessment year 2005-2006, 2004-2005 respectively against the order of the Deputy Commissioner of Income Tax Company Circle i(1) Chennai dated 30.09.2009 in PA/GIR.No. AAACA7402P/Ax6-691 for the assessment year 2005-2006 of 2004-2005, respectively against the order of the Commissioner of Income Tax Chennai 1 dated 24.03.2009 in C.No. 218/CIT-I/47 & 48/ 263-2008-2009, for the assessment year 2004-2005 & 2005-2006, against the order of the Deputy Commissioner of Income Tax Company Circle 1(1) Chennai dated 30.09.2008 GIR.No.AAACA7402P/AX6-691, for the assessment year 2004-2005, against the order of the Assistant Commissioner of Income Tax Company Circle 1(1)Chennai dated 26.12.2007 in GIR No. AAACA7402P/AX6-691, Assessment year 2005-2006, against the order of the Deputy Commissioner of Income Tax, Central Circle IV(1) Chennai dated 30.05.2006 in GIR No. AAACA7402P/1-A for the Assessment year 2004-2005.

For Appellant : Mr.R.Hemalatha
For Respondent : Mr.R.Sivaraman

C O M M O N J U D G M E N T

Judgment of the Court was delivered by T.S.Sivagnanam, J.]

These appeals by the Revenue are filed under Section 260A of the Income Tax Act, 1961 (for short the "Act") against the order dated 15.12.2010 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench in ITA Nos.1165 and 1166/Mds/2009 for the assessment years 2004-05 and 2005-06 respectively.

2. These Appeals have been admitted on the following Substantial Question of Law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax under Section 263 of the Income Tax Act?"

3. Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue and Mr.Sivaraman, learned counsel for the respondent.

4. The short issue which falls for consideration is whether the Commissioner could have exercised his power under Section 263 of the Act.

5. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., vs. CIT (109 Taxman 66) held that in order to revise an order under Section 263 of the Act, it must be erroneous and prejudicial to the interest of the Revenue.

6. In our considered view, the Tribunal rightly found that the completion certificate could be available only when the project is physically completed and as far as assessee's case is concerned, they had produced the completion certificate with reference to the previous year 2007-08 relevant to the assessment year 2008-09.

7. Considering the factual aspects, we are of the view that the Revenue has not made out any case for interference with the order passed by the Tribunal. Thus, we hold that no substantial question of law has arisen for consideration. Accordingly, the appeals stand dismissed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Income Tax Appellate Tribunal 'A' Bench
Madras.

2. The Commissioner of Income Tax Appeals(III)
Chennai.

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

4. The Commissioner of Income Tax,
Chennai 1.

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

6. The Deputy Commissioner of Income Tax
Central Circle IV(1) Chennai

+1 CC to Ms.R.HEmalatha, Advocate sr 289.

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SSI(CO)
SP(11/02/2019)