In the High Court of Judicature at Madras

Dated : 27.08.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.420 of 2015

Commissioner of Income Tax,
Salem. ...Appellant

Vs

Sri Balaji Infra Developers,
5-38 U, Arumuga Nagar,
Alagapuram, Salem - 636 016. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 12.12.2014 made in ITA.No.2707/MDS/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2011-12. against the order of the Commissioner of Income Tax (A), Salem -7, dated 28/08/2014 made in ITA.No. 257/2013-14 and against the Assessment Order passed by the Income Tax Officer, Ward 1(4), Salem dated 28/02/2014 made in PAN ABSF9728G.

For Appellant : Mr.M.Swaminathan, SSC
and Ms.V.Pushpa, SC

For Respondent: Mr.K.S.Loganathan

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

We have heard Mr.M.Swaminathan, learned Senior Standing Counsel, and Ms.V.Pushpa, learned Standing Counsel appearing for the appellant/revenue and Mr.K.S.Loganathan, learned counsel appearing for the respondent/assessee.

2.This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 12.12.2014 made in ITA.No.2707/MDS/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2011-12.

3.The appeal was admitted on 21.07.2015 on the following substantial questions of law :

> "i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in considering the issue of applicability of Section 40a(ia) to amounts paid or payable before the last day of the financial year which was not the subject matter of the CIT(A) order?
>
> ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Section 40a(ia) can be invoked only to the amounts of expenditure which are payable as on last day of the financial year and the not the expenditure incurred during the financial year?
>
> iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering the issue payments to intermediary without correlating the service provider and non deduction of tax at source to the service provider/poklinne operator/contractor?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5.In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cse
To

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

2.The Commissioner of Income Tax (A),
Salem -7.

3.The Income Tax Officer,
Ward I (4), Salem.

+1cc to Mr.Swaminathan, Standing Counsel for Income Tax Department, S.R.No. 73569

TCA.No.420 of 2015

EV(CO)
GN(31/10/2019)