In the High Court of Judicature at Madras

Dated : 28.08.2019

Coram :

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

Tax Case Appeal Nos.107 and 108 of 2018

Commissioner of Income Tax,
Corporate Circle 3(1), Chennai. ...Appellant in both the Appeals

Vs

M/s.Redphoenix Consultancy Private Limited
(Presently Tirunelveli Vayu Energy Generation Private Limited), Jhaver Plaza III Floor,
No.1-A, Nungambakkam High Road,
Chennai - 600 034.
PAN: AACCR7329G ...Respondent in TCA.No.107 of 2018

M/s.Tirunelveli Vayu Energy Generation Pvt. Ltd.,
(Formerly M/s.Shukla Consultancy Pvt. Ltd.)
Old No.20/1B, New No.8, Valliammal Achi Street,
Kotturpuram, Chennai - 600 085.
PAN: AABCT2250P ...Respondent in TCA.No.108 of 2018

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 05.07.2017 made in ITA.Nos.1961 and 2647/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2010-2011.

I.T.A. Nos. 1961 & 2647/mds/2016 against the Commissioner of Income Tax (appeals)15 Chennai 34 in I.T.A.743/CIT(A)-15/2013-2014 dated 10.03.2016 for the Assessment year 2010-2011 in GIR.No./PAN/AACCR7329G for the assessment year 2010-2011 against the Joint Commissioner of Income Tax Company Range V, chennai in PAN AACCR7329G for the Assessment year 2010-2011.

For Appellant : Mr.M.Swaminathan, SSC assisted by Ms.V.Pushpa, SSC

For Respondent: Mr.R.Venkatanarayanan for M/s.Subbaraya Aiyar Padmanabhan

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

We have heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Senior Standing Counsel for the appellant - Revenue and Mr.R.Venkatanarayanan, learned counsel for M/s.Subbaraya Aiyar Padmanabhan, learned counsel appearing for the respondent-assessee.

2.These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 05.07.2017 made in ITA.Nos.1961 and 2647/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2010-2011.

3.The appeals were admitted on 04.11.2015 on the following substantial questions of law :

> "i.Whether the Tribunal erred in law in deleting disallowance under Section 40(a)(ia) of the Income Tax Act, 1961, on the ground of short deduction of tax (TDS) at source from payment for making of an advertisement film?
>
> ii.Whether expenditure on the making of an ad-film is a business expenditure allowable under Section 37 of the Income Tax Act, 1961?
>
> iii.Whether the finding of the learned Tribunal that the assessee had paid service charges at the rate of market value, when service charges at the rate of market value, when service charges had been paid at 6% of the total turnover as against 3% of the total turnover in the previous year is vitiated by perversity?
>
> iv.Whether the Tribunal erred in law in holding that the provisions of Section 14A read with Rule 8D will have no applicability, if there is no exempt income?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeals are 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 the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases 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 appeals to be heard and decided on merits. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

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

2.The Commissioner of Income Tax
Corporate Circle 3(1) Chennai.

3.The Commissioner of Income Tax (Appeals)15
Chennai 34.

4.The Joint Commissioner of Income Tax
Company Range V, Chennai

+1 CC to Mr.M.Swaminathan, Advocate sr 74849.
+1 CC to M/s. Subbaroya Aiyar Padmanabhan, Advocate sr 74737.

TCA.Nos.107 and 108 of 2018

RJI(CO)
SP(22/10/2019)