In the High Court of Judicature at Madras

Dated : 09.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.433 of 2019

M/s.Amtex Software Solutions
Pvt. Ltd., Chennai-18. ...Appellant

Vs

The Assistant Commissioner of
Income Tax (OSD), Corporate
Range-1, Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 to set aside the order dated 02.1.2019 made in ITA.No.399/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2013-14, preferred against the order of the Commissioner of Income Tax(Appeal)-I, Chennai dated 29.11.2017 made in ITA.NO.657/CIT(A)-1/2016-17 for the Assessment year 2013-14 against the order dated 23.12.2016 passed by the Assistant Commissioner of Income Tax(OSD), Corporate Range 1, Chennai for the Assessment year 2013-2014 (PAN.NO.AAFCA0638J).

For Appellant : Mrs.G.Vardini Karthik

For Respondent : Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mrs.G.Vardini Karthik, learned counsel for the appellant - assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel accepting notice for the respondent - Revenue.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 02.1.2019 in ITA.No.399/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2013-14.

3. The assessee has filed this appeal by raising the following substantial questions of law :

> "i. Whether, on the facts and circumstances of the case, the Tribunal was right in disallowing the guest house expenditure based on the undated inspector's report, which remains unfurnished to the appellant till date ?
>
> ii. Whether, on the facts and circumstances of the case, the Tribunal was right in rejecting the documents like lease deed and e-mail correspondence filed at the time of hearing without restoring the matter to the Lower Authorities to check on the veracity of the documents filed? And
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> iii. Whether, on the facts and circumstances of the case, the Tribunal was right in denying depreciation on capital expenditure incurred for improvements made to the leasehold property, when the law permits under Explanation 1 to Section 32 of the Income Tax Act, 1961 ?"

4. The short issue, which falls for consideration in this appeal, is as to whether the Tribunal was right in disallowing the guest house expenditure.

5. The Assessing Officer disbelieved the stand taken by the assessee that they incurred expenditure for the maintenance of the guest house. It appears that an inspector attached to the office of the Assessing Officer was deputed to visit the premises and that the inspector was stated to have given a report, which appeared to be the basis of the assessment.

6. Aggrieved by the order of assessment dated 23.12.2016, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-1, Chennai-34 [for brevity, the CIT(A)], who confirmed the order passed by the Assessing Officer vide order dated 29.11.2017. The assessee filed an appeal before the Tribunal as against the order passed by the CIT(A). Before the Tribunal, the assessee filed a bunch of documents including e-mail correspondence, etc., to substantiate the plea that the guest house was utilized for accommodating people from abroad, who have come to visit the assessee's business establishment, that the guest house is located near the assessee's business establishment situated at Siruseri, that the allotment in the guest house is made through the HR Department of the assessee and that there are sufficient e-mail correspondence with the HR department of the assessee to show that the premises is used as a guest house. Apart from that, the assessee's case is that the premises is put to use for conducting periodical meetings,

conferences, training sessions and for entertainment of officers and staff during weekends and holidays.

7. We find that the CIT(A) had taken note of the bunch of documents filed by the assessee. Nevertheless, she was not convinced with the stand taken by the assessee and dismissed the appeal. On further appeal by the assessee, the Tribunal concurred with the findings of the CIT(A) and dismissed the appeal by the impugned order.

8. In our considered view, when once the CIT(A) noted that there were documents filed by the assessee to substantiate their contention, the least that could have been done is to call for a remand report from the Assessing Officer. This is relevant for the facts of the present case because the matter concerns assessment for the year 2013-14. The Assessing Officer does not give the date, on which, the inspector attached to the office of the Assessing Officer inspected the property and the report, which has been extracted in paragraph 3.3 of the impugned order also does not give the date, on which, the inspector submitted his report.

9. In all probabilities, the inspection would have been conducted only during November/December 2016 just prior to completion of the assessment vide order dated 23.12.2016. Considering all these facts, a remand report would have definitely thrown better light on the factual position to enable the CIT(A) to come to a conclusion. The above reasoning appears to have weighed in the mind of the CIT(A) while considering the appeals filed by the assessee for the assessment years 2014-15 and 2015-16 respectively in ITA Nos.662/CIT(A)-1/16-17 and 135/CIT(A)-1/17-18.

10. It is submitted by the learned counsel that already the CIT(A) called for a remand report from the Assessing Officer with regard to very same claim made by the assessee towards guest house expenditure for the assessment years 2014-15 and 2015-16.

11. Considering these facts, we deem it appropriate to remand the matter to the CIT(A) so as to enable her to consider the assessee's case for the assessment year 2013-14 also along with the appeals pertaining to the assessment years 2014-15 and 2015-16.

12. For the above reasons, the above tax case appeal is allowed, the impugned order passed by the Tribunal as well as the order passed by the CIT(A) dated 29.11.2017 are set aside

and the matter is remanded to the CIT(A) for a fresh consideration to be heard and decided along with the appeals pertaining to the assessment years 2014-15 and 2015-16, for which, a remand report has already been called for. The substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

To

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

2.The Assistant Commissioner of Income Tax (OSD), Corporate Range I, Chennai-34.

3.The Commissioner of Income Tax(Appeals)-1,
Chennai-34.

+1cc to Mr.R.Ravi Kumar, Advocate sr.57262
+1cc to Mrs.G.Vardini Karthik, Advocate sr.57691
+1cc to Mr.T.Ravikumar, Advocate sr.58264

TCA.No.433 of 2019

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