In the High Court of Judicature at Madras

Dated : 30.8.2019

Coram :

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

Tax Case Appeal No.440 of 2016

The Commissioner of Income
Tax, Chennai ...Appellant

Vs

M/s.Dharani Sugars & Chemicals
Ltd., Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 14.8.2015 made in ITA.No.217/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2004-05 against the order of the Commissioner of Income Tax, Chennai dated 26.03.2019 in C.No. 218/CIT-1/56/263/2008-2009 in the assessment year 2004-2005 against the order of the Income Tax Officer, OSD Company Circle 1(4) Chennai dated 08.11.2006 PA.GIR. No. AAACD1281F in the assessment year 2004-2005.

For Appellant :Mr.T.Ravikumar, SSC and
Mrs.R.Hemalatha, SSC

For Respondent :Not ready in notice

JUDGMENT

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.Ravikumar and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 14.8.2015 made in ITA.No. 217/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2004-05.

3. The appeal was admitted on 13.7.2016 on the following substantial questions of law :

"i. Whether on the facts and circumstances of the case, the Tribunal was

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right in setting aside the order passed under Section 263 on the ground that there was no finding recorded that the assessment order was erroneous and prejudicial to the interest of revenue?

ii. It is not the finding of the Tribunal bad especially when the Commissioner of Income tax while passing order under Section 263 had given categorical finding that the order passed by the AO is erroneous and had also given clear finding that an amount of Rs.2.04 crores being cessation of liability and that the assessee has not actually incurred the said expenditure but had claimed it as a deduction under Section 43B without the same written back to the profit and loss account in the computation statement? and

iii. Whether the finding of the Tribunal is proper especially when the notice issued under Section 263 dated 20.2.2009 clearly states the reasons that the assessment made was erroneous and prejudicial to the interest of the revenue?"

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.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

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To

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

2.The Commissioner of Income Tax, Chennai

3.The Income Tax Officer(OSD)
Company Circle 1(4)
Chennai

+1 CC to Mr.T.Ravikumar, Advocate sr 75254.

TCA.No.440 of 2016

MG(CO)
SP(08/11/2019)

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