IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.No.411 of 2018

Commissioner of Income Tax,
Corporate Circle – 3
Chennai. ... Appellant/Respondent

Vs

M/s.Tamil Nadu Urban Finance &
Infrastructure Development Corporation Limited,
No.460/1-2, Anna Salai, Nandanam,
Chennai 600 035
PAN: AAACT1259R ... Respondent/Appellant

PRAYER : Appeal under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, dated 27.07.2017 passed in ITA.No.1315/MDS/2015, against the order of the Commissioner of Income Tax (Appeals)-II, Chennai, dated 26.02.2015 for the assessment year 2006-07 in old ITA No.2059/2013-14, New ITA No.731/CIT (A)-II/2013-14 and against the assessment order of the Assistant Commissioner of Income Tax Company Circle-III (1), Chennai-34 dated 28.11.2008 vide GIR No./PA:AAACT1259R/31023-T for the assessment year 2006-07.

For Appellant : Mr.M.Swaminathan
Senior standing counsel
and Ms.V.Pushpha

For Respondent : Mr.M.P.Senthilkumar

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

This Tax Case Appeal has been preferred by the Revenue against the order dated 27.07.2017 passed in ITA.No.1315/MDS/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2006-07.

2.The appeal was admitted on 29.06.2018 on the following substantial questions of law :

> "(i)Whether the Tribunal is right in quashing the re-opening assessment order under Section 147 though the case was re-opened as per Explanation (2)(c)(iv) to Section 147 for excessive allowance computed?
>
> (ii)Whether the Tribunal was right in holding that the assessment cannot be reopened unless the negligence is on the part of the assessee though the income has escaped from assessment within the meaning under Explanation (2)(c)(iv) to Section 147? "

3.Mr.M.Swaminathan, learned Senior Standing Counsel would submit that the assessment order was passed under Section 143(3) of the Income Tax Act, 1961 on 28.11.2008 and notice for re-opening the assessment under Section 148 of the Income Tax Act, 1961 was ordered on 30.03.2013 and re-assessment order has been passed on 17.01.2014, by which the Assessment Officer found that the assessee is eligible to allowance only to the tune of Rs.4,43,21,439/- as against the allowance of Rs.5,05,10,900/-. The said assessment order was challenged before the Commissioner of Income Tax (Appeals) by the assessee and the appeal was partly allowed. The said order was challenged before the Appellate Tribunal by the assessee. The assessee's appeal was allowed by the Tribunal stating that no material was brought on record by the Assessment Officer and as per proviso to Section 147 of the Income Tax Act, 1961, there should be negligence on the part of the assessee in furnishing material required for completing the assessment. Only if there is a failure on the part of the assessee, the six years limitation period could be invoked whereas in this case, the original assessment order was passed on 28.11.2008 and notice for re-opening the assessment was issued on 30.03.2013 which is exactly six years. Since there are no fresh materials available and there is no negligence on the part of the assessee, the question of re-opening does not arise. Therefore, the Appellate Tribunal rightly allowed the assessee's Appeal. Accordingly, the substantial questions of law are answered.

4.Even though Mr.M.Swaminathan, learned senior standing counsel would try to justify the issuance of re-opening notice under Section 148 of the Income Tax Act, 1961 and rely upon Explanation (2) (c) (iv) of Section 147, there is no fresh material brought on record to issue notice for re-opening the assessment.

5.In similar circumstances, this Court has also decided the matter in the same way in TCA.No.765 of 2019 on 22.11.2019.

6.Accordingly, the Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax,
Corporate Circle – 3,
Chennai.

2.Income Tax Appellate Tribunal 'C' Bench,
Chennai.

3.The Commissioner of Income Tax (Appeals)-II
Chennai.

4.The Assistant Commissioner of Income Tax,
Company Circle III (1),
Chennai-34.

+1cc to Mr.G.Baskar, Advocate Sr No.101468 (15/11/2021)

T.C.A.No.411 of 2018

AKII (CO)
PR (22/09/2021)