IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TCA.No.539 of 2018

Principal Commissioner of Income Tax 2,
No.63, Race Course Road,
Coimbatore. .. Appellant/Respondent

Vs.

M/s. Maharaja Sathyam Industries (P) Ltd.,
119, Bhavani Road,
Erode - 638 004. .. Respondent/Appellant

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, Chennai, dated 10.03.2017 in I.T.A.No.326/Mds/2016 for the assessment year 2012-2013 against the order passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai dt.02/11/2016 made in ITA.No.1334/2016 for the Assessment Year 2012-13 and against the order passed by the Commissioner of Income Tax(Appeals)-3, Coimbatore dt.29/02/2016 made in ITA No. 601/2014-15 for the Assessment year 2012-13 and against the order passed by the Income Tax Department, Erode dt: 20/03/2015 made in AACCS9484P for the Assessment year 2012-13.

For Appellant : Mr. T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : No appearance

* * *

J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal filed by the assessee under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the Act) is directed against the order dated 10.03.2017 passed by the Income Tax Appellate Tribunal Madras 'A' Bench in I.T.A.No.326/Mds/2016 for the Assessment Year 2012-2013.

2. The revenue has filed this appeal raising the following substantial questions of law:

> " (i) Whether the Tribunal is correct in law in holding that the order dated 02.11.2016 is an exparte order after considering the case on merits?
>
> (ii) Whether the Tribunal is correct in reviewing its earlier order dated 02.11.2016 by recalling the same under Section 254 of the Act?
>
> (iii) Whether the Tribunal is correct in law in holding that the order dated 02.11.2016 is an exparte order even after recording the assessee's submissions and allowing the revenues appeal on merits?"

3. This appeal filed by the revenue is directed against the order passed by the tribunal in a miscellaneous petition filed by the assessee to recall the earlier order passed by the tribunal dated 02.11.2016 in the appeal filed by the revenue.

4. The tribunal by the said order set aside the order of Commissioner of Income-Tax(Appeals)-3 (Coimbatore) in ITA.No.601/2014-15 dated 29.02.2016 and remanded the entire disputed issue to the file of the Assessing Officer for fresh adjudication. The assessee approached the Tribunal complaining that they were not heard in the matter and it appears that they gave some reasons as to why they did not appear before the Tribunal. The tribunal by impugned order dated 10.03.2017 found that the decision taken by it earlier on 02.11.2016 was without affording an opportunity to the assessee and recall the ex-parte order dated 02.11.2016 stating that it should be done in the interest of justice.

5. Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the revenue submitted that the Tribunal failed to give proper reasons for recalling the earlier order dated 02.11.2016, more particularly, when the Tribunal had decided the matter on merits and recorded its findings in paragraph 7 of the order dated 02.11.2016. It is further submitted by learned counsel for appellant-revenue that the Tribunal had no jurisdiction to recall its earlier order especially when it did not have power to review its own order, even if the power under Section 254 of the Act was invoked.

6. It is further submitted by the learned counsel for the Revenue that in the light of the decision in the case of Abhishek Industries reported in 286 ITR 1 (Punjab & Harayana), the Tribunal become functus officio and has no power to recall its earlier order. In support of such contentions, reliance was also placed in the case of CIT Vs. Earnest Exports Ltd., reported in

323 ITR 577 (Bombay) and CIT Vs. MC. Dowell &Co reported in 310 ITR 215 (Karnataka). It may not be necessary for us to render a decision on the grounds raised by the revenue on account of subsequent developments. After tribunal passed the impugned order, the matter was recalled by the tribunal and fresh orders have been passed by the CIT(A) on 27.07.2017 allowing the revenue's appeal and remanding the matter for fresh consideration to the Assessing Officer.

7. In the light of the above, there is no necessity for answering the substantial question of law raised by the revenue in this appeal as the exercise has become academic.

8. For the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law raised by the revenue are left open. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//
Sub Assistant Registrar

mp/ska

To:

1.The Principal Commissioner of Income Tax-2,
No.63, Race Course Road, Coimbatore.

2.The Income Tax Appellate Tribunal
Madras 'A' Bench, Chennai.

3.The Assistant Commissioner of Income Tax,
Circle 1, No.15, Gandhi Road, Erode.

4.The Commissioner of Income Tax(Appeal)-3,
Coimbatore.

TCA.No.539 of 2018

KK(CO)

RRS(23/07/2019)