IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

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

Tax Case Appeal No.51 of 2014

Commissioner of Income Tax,
Media Circle, Chennai-600 034. .. Appellant/Appellant

-vs-

M/s.R.K.Swamy BDO (P) Limited,
Film Chamber Building,
No.604, Anna Salai,
Chennai-600 006.
PAN: AACCR2213F .. Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.09.2013, made in I.T.A.No.1525/Mds/2013 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2009-10 preferred against the order of the Commissioner of Income Tax (Appeals)VI Chennai dated 25.03.2013 made in Appeal No. 294/2011-2012 filed against the Assessment order of this Joint Commissioner of Income Tax, Media Range Circle II, Chennai dated 29.12.2011 for the Assessment year 2009-2010.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

: assisted by Ms.S.Premalatha,
Standing Counsel

For Respondent : Mr.A.S.Sriraman
For Mr.S.Sridhar

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the Revenue under Section 260A of the Income-tax Act, 1961 is directed against the order dated 20.09.2013, made in I.T.A.No.1525/Mds/2013 on the file of the Income Tax Appellate Tribunal Bench 'A', Chennai for the assessment year 2009-10.

2.The above appeal was admitted on 21.04.2014, on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was right in law in holding that expenditure incurred by the assessee towards payment of rent to its sister concern TIPL was not excessive when compared to the payments made by similar entities and disallowance under the provisions of Section 40A(2) are not warranted?
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> (ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was right in law in holding that disallowance of interest payment based on the diversion of interest free rental deposit to its sister concern is not warranted since there was no link between the borrowal and payment of advance to the concern?
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> (iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the interest free deposit made to its sister concern following the Apex Court judgment in the case of S.A.Builders which is referred to larger bench of the Apex Court for re-consideration?
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> (iv) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was right in law in holding that the assessee is eligible for 100% depreciation on the leasehold premises towards the expenditure incurred in connection with false roofing, wooden partition/cabin etc?"

3.Heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.S.Premalatha, learned Standing Counsel for the appellant - and Mr.A.S.Sriraman, learned counsel for Mr.S.Sridhar, learned Counsel for the respondent.

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 08.08.2019 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. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

abr
To
1.The Assistant Registrar
The Income Tax Appellate Tribunal 'A' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)VI, Chennai

3.The Joint Commissioner of Income Tax
Media Range Circle II
Chennai

+1 CC to Mr.M.Swaminathan, Advocate sr 73016.
+1 CC to Mr.S.Sridhar, Advocate sr 72497.

T.C.A.No.51 of 2014

RSI(CO)
SP(18/11/2019)