IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM :

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

T.C.A.No.672 of 2019

Commissioner of Income Tax,
Corporate Circle 3,
Chennai. ... Appellant

Vs

M/s.VR Global Energy Private Limited,
II nd Floor, Temple Tower,
62, Anna Salai, Nandanam,
Chennai 600 035.
PAN: AABCT3716E ...Respondent

PRAYER: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961 against the order dated 09.04.2019 in ITA No.3363/Chny/2018 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment year 2012-13, against the order dated 27/9/18 made in ITA No.20/17-18 on the file of the Commissioner of Income Tax(Appeals)-11, Chennai for the assessment year 2012-13. Against the order dated 31/3/17 made in AABCT3716E/2016-17 on the file of the Income Tax Officer, Chennai for the assessment year 2012-13.

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

J U D G M E N T
(Order of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Department of Revenue against the order of the Income Tax Appellate Tribunal by which the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals) who deleted the penalty levied on the assessee under Section 271 (1) (c) of the Income Tax Act.

2.On appeal, the Commissioner of Income Tax (Appeals) dismissed the assessee's appeal stating that agreements relied upon by the assessee are colorable devices for the purpose of introducing cash credit by way of share capital and share premium. Against the dismissal of the said appeal, the assessee filed an appeal before the Appellate Tribunal which has also confirmed the order of the assessment officer. Thereafter, the assessee filed a Tax Case Appeal before this Court in T.C.A.No.246 of 2017 and this Court by Judgment dated 06.08.2018, set aside the assessment order and allowed the appeal. The said order has been challenged before the Hon'ble Supreme Court by SLP and the said SLP is said to be pending before the Supreme Court.

3.In the meanwhile, the penalty proceedings have been initiated under Section 271 (1) (c) of the Act. As the time limit for initiation of penalty proceedings under Section 275 of the Income Tax Act is six months, the said penalty proceedings have been challenged by the assessee before the Commissioner of Income Tax (Appeals) who allowed the appeal deleting the penalty levied by the assessment officer. The said order was unsuccessfully challenged before the Tribunal by the Department of Revenue. The said order of the Appellate Tribunal is challenged before this Court.

4.Mr.M.Swaminathan, learned Senior Standing Counsel for the department would submit that penalty proceedings is independent and it is covered by Section 270 of the Act and therefore, irrespective of the assessment proceedings, the penalty proceedings have to go on. Otherwise, limitation would be lost.

5.This Court is not in agreement with the submissions of the appellant. First of all, once the basis on which the penalty proceedings have been initiated is under challenge before this Court in Tax Case Appeal, there is no occasion for the department to levy penalty. In the event of the order of the High Court being reversed by the Supreme Court on SLP filed by the Government, the appellant has got time limit from the date of the order of the Supreme Court to levy penalty.

5.Even otherwise, it is also pointed out that six months time is the time limit given under Section 275 of the Income Tax Act. Even time limit given under Section 275 (1) (a) would start from the date of the supreme Court's order. When such is the position, this Court finds no substantial questions of law and hence, the order of the Appellate Tribunal is confirmed. With liberty as stated above, this appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To

1.Commissioner of Income Tax,(Appeals)-11,
Chennai.

2.The Income Tax Officer,
Corporate Ward(4)
Chennai.

+1cc to Mr.M.Swaminathan, Advocate SR.95681

T.C.A.No.672 of 2019

RSV(CO)
CB(17/12/2019)