In the High Court of Judicature at Madras

Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.313 of 2017

Principal Commissioner of Income
Tax-2, Chennai ...Appellant

Vs

M/s.Expo Freight Pvt. Ltd.,
Chennai-34 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 08.12.2016 in ITA.No.364/Mds/2014 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment year 2009-10 against the order of the Commissioner of Income Tax (Appeals)-II in ITA.No.1536/13-14 dated 28.10.2013 against the penalty order dated 25.06.2012 of the Deputy Commissioner of Income Tax, Company Circle II(1), Chennai-34 dated 30.12.2011 for the Assessment year 2009-2010.

For Appellant : Mr.T.R.Senthilkumar, SSC &
Ms.K.G.Usharani, JSC

For Respondent : Mr.S.Sridhar

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior Standing Counsel for the appellant.

2. The appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The Revenue has filed the appeal by raising the following substantial questions of law :

> "i. Whether, in the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the penalty levied under Section 271(1)(c) of the Act, when the assessee declared the correct income by filing a revised return pursuant to the survey action under Section 133A made by the Department ?

ii. Whether, in the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the penalty levied under Section 271(1)(c) of the Act relying on the Apex Court's decision in the case of Reliance Petro Products Private Limited, which is distinguishable on the facts of the assessee's case ? And

iii. Whether, in the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the penalty levied under Section 271(1)(c) of the Act, when the decision of the Apex Court in the case of M/s.MAK Data Private Limited confirmed the levy of penalty under Section 271(1)(c) of the Act ?"

3. The Revenue seeks to withdraw the appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the 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.

Sd/-
Assistant Registrar

//True Copy//

rs Sub Assistant Registrar

To

1) The Income Tax Appellate Tribunal, Madras 'B' Bench.

2) The Deputy Commissioner of Income Tax,
Company Circle II(1), Chennai-34

3) The Commissioner of Income Tax (Appeals)-II,
Chennai-34

+ 1 cc to Mr.S.Sridhar, Advocate, SR No.360

TCA.No.313 of 2017

PPA(CO)
SSM(14/02/2019)