IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.3.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.760 of 2018

Principal Commissioner of Income Tax
Central 1,
108, Nungambakkam High Road,
Chennai 600 034. Appellant

Vs.

M/s.Rocky Marketing (Chennai)
Pvt. Ltd.
No.3/8, Mayor Sambandam Street,
Rangarajapuram, Chennai 600 024.
PAN: AABCR 0196G Respondent

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 5.2.2018 made in ITA No.1707/Mds/2017, against the order passed by the Commissioner of Income Tax (Appeals)-18, Chennai dated 17/05/2017 in ITA No.30/16-17 for the Assessment year 2013-14 passed U/s 250(4) r.w.s 143(3) against the assessment order of the Deputy Commissioner of Income Tax, Central Circle-1(1), Chennai dated 17.0.2016.

For Appellant : Mrs.K.G.Usha Rani,
Junior Standing Counsel

For respondent : Mr.C.Mohan

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 5.2.2018 made in ITA No.1707/Mds/2017, by raising the following substantial questions of law:

"i) Whether the Appellate Tribunal is correct in law in directing the Assessing Officer to apply the ratio of the judgment of the Hon'ble Supreme Court in the case of S.A.Builders Ltd. V. CIT reported in 288 ITR 1, by ignoring the fact that the said judgment is under re-consideration by the Hon'ble Supreme Court?

ii) Whether the ITAT is correct in law in remitting the assessment back to the assessing officer to do the same again afresh, without ascertaining whether there exists any commercial exigency as claimed by the assessee, in the transaction of diversion of its interest bearing funds to its sister concern as interest-free advance?

ii) Whether, on the facts and in the circumstances of the case, the ITAT is correct in law in making observation that the aspect with respect to the activities of the group companies are not brought out by the assessing officer to examine the commercial exigency, whereas, the real onus lies upon the assessee to prove such commercial exigency and the addition was made as the assessee failed to discharge such onus?"

2. When the matter is taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.7.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the appeal filed by the Revenue is dismissed as not pressed, keeping open the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

ssk Sub Assistant Registrar

To

1. Principal Commissioner of Income Tax
   Central 1,
   108, Nungambakkam High Road,
   Chennai 600 034.

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

3. The Deputy Commissioner of
Income Tax,
Central Circle I (1), Chennai.

4. The Commissioner of Income Tax (Appeals)-18,
Chennai.

+1 cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.25922

PP(CO)
SSM(30/05/2019).