IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2020

CORAM

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

T.C.A.No.418 of 2019

The Commissioner of Income Tax,
Chennai. .. Appellant

Versus

M/s.Acurus Solutions Pvt Ltd.,
No.4/363, ''C'' Block, Rajaji Street,
CMIR, Kandanchavadi, Chennai 600 096
PAN : AADCA4486E .. Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''B'' Bench, Chennai dated 04.09.2018 in I.T.A.No.1003/Chny/2018, arising against the order passed by the Commissioner of Income Tax (Appeals)-4, Chennai, dated 13.12.2017 in ITA No.321/2016-17/A.Y.2009-10/CIT(A)-4, arising against Assessment Order Passed by the Income Tax officer, Corporate ward-I(1), dated 30.03.2016 PAN AADCA4486E.

For Appellant : Ms.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.V.S.Jayakumar

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal, filed by the assessee, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 04.09.2018 passed by the Income Tax Appellate Tribunal Bench 'B' Chennai ('the Tribunal' for brevity) in I.T.A.No.1003/Chny/2018 for the Assessment Year under consideration (AY 2009-10). The appeal is entertained on the following Substantial Questions of Law:

1. Whether on the facts and circumstances of the case the Tribunal was right in dismissing the departmental appeal on the ground of low tax effect without taking note of the fact that the case is

covered by exceptions provided under clause (10)(c) of Circular No.3 of 2018 wherein it has been clearly stated that the cases involving revenue audit objection which had been accepted by the department are to be disposed off on merits?

2. Is not the finding of the Tribunal bad, especially the last fact finding authority should have disposed off the matter on merits especially in cases where the Revenue audit objections had been accepted by the department?

2. The first Substantial Question of Law raised by the Revenue is whether the Tribunal was right in dismissing the appeal filed by the Revenue on the ground that the appeal is hit by the Circular No.3 of 2018 dated 11.07.2018 issued by the Central Board of Direct Tax ('CBDT') fixing the monetary limit with regard to the appeals filed by the Revenue. It is the argument of Ms.R.Hemalatha, learned Senior Standing Counsel that the Tribunal erred in applying the Circular, since the assessee's case falls within Clause 10(c) of the Circular which deals with exceptional circumstances in which though the tax effect is low, within the threshold limit, the Revenue would be able to pursue the appeal before the Tribunal or before this Court.

3. Upon perusal of the relevant papers, we find that there is an audit objection which has been raised and if this is so, the case would fall within the exception pointed out under Section 10(c) of the Circular No.3 of 2018 dated 11.07.2018. Subsequent circular issued in the year 2019 also contains the very same exceptional clauses and even in the new Circular, the Revenue would be entitled to pursue the remedy.

4. In the light of the above, we have no hesitation to hold that the Tribunal erred in dismissing the Revenue's appeal on the ground of low tax effect. For the above reason, the Substantial Question of Law No.1 is answered in favour of the Revenue and consequently the order passed by the Tribunal is set aside. The natural consequence that will follow, when such orders are passed by the Courts, is to remit the matter to the Tribunal for fresh consideration.

5. We have heard Ms.R.Hemalatha, learned Senior Standing Counsel for the Revenue and Mr.V.S.Jayakumar, learned counsel for respondent/assessee on this aspect. We note that the tax demanded from the respondent assessee is Rs.2,78,840/-. Considering the low demand, we thought fit to hear the matter on merits.

6. We have elaborately heard the learned counsels for the parties.

7. The assessee is a Private Limited Company filed its return of income for the assessment year under consideration (AY 2009-10) on 14.09.2009 admitting 'Nil' income under the normal provision and a sum of Rs.28,34,017/- under the MAT provisions. The assessee claimed deduction under Section 10A of the Act to the tune of Rs.44,98,815/- and the claim made was for the first year. The case of the assessee was selected for scrutiny and it was completed under Section 143(3) of the Act, accepting the return of income filed by the assessee. Subsequently the assessment was reopened by issuance of notice under Section 148 of the Act dated 28.09.2015. The reason being that the assessee had omitted to adjust the business loss and unobserved depreciation of the assessment years 2007-08 & 2008-09 and he had failed to comply with the provisions of Section 10A(2)(ii) and (iii) of the Act. The assessee vide letter dated 04.11.2015 stated that the return originally filed under Section 139 of the Act may be treated as a return filed pursuant to the notice issued under Section 148 of the Act. The assessee after obtaining reasons for reopening had objected to the same, which was rejected by the Assessing Officer by an order dated 07.03.2016. Consequently the reassessment was completed vide order dated 30.03.2016. Challenging the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-4, Chennai, [CIT(A)]. By order dated 30.03.2016, the CIT(A) allowed the assessee's appeal on the ground that reopening was not justified as well as on merits. Questioning such an order, the Revenue preferred an appeal before the Tribunal and the same was dismissed by the impugned order, on the ground of Low Tax Effect, which we have held to be not sustainable.

8. Second Substantial Question of Law raised by the Revenue in this appeal has been decided earlier by the Division Bench of this Court and the legal issue is no longer res integra. At this stage, it would be beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Income Tax Vs. Comstar Automative Technologies Pvt Ltd., (TCA No.301/2019 dated 06.07.2020). The Substantial Question of Law framed for consideration in that appeal was identical to that of the case on hand except for the fact in the said case, the provision which was pressed into the service is Section 10B of the Act. The appeal filed by the Revenue was dismissed by judgment dated 06.07.2020 following the decision in the said assessee's case in M/s.Comstar Automative Vs. The Deputy Commissioner of Income Tax (T.C.A.No.228/2011 dated 18.03.2020).

9. In the light of the above decision, the Substantial Question of Law no.1 is answered in favour of the appellant/Revenue and the Substantial Question of Law no.2 is answered in favour of the respondent/assessee.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.Commissioner of Income Tax
Corporate Ward 3(4)
Chennai.

2.The Income Tax Appellate Tribunal, B Bench,
Chennai.

+1 cc to M/s.V.S.Jayakumar, Advocate Sr.No. 30559
+1 cc to M/s.T.Ravikumar , Advocate Sr.No. 30686

T.C.A.No.418 of 2019

RSK(CO)
RMP(21/10/2020)