IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.197 of 2013

Commissioner of Income Tax III
Chennai ... Appellant

Vs.

M/s.Samalpatti Power Co (P) Ltd.,
Sreyas Virat,
No.14, III Cross Street,
R.A.Puram, Chennai 28 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 30.07.2012 made in ITA No.381/Mds/2011, A.Y-2003-04 ITA No.381/Mds/2011 against the commissioner of Income Tax(Appeals)V, Chennai in ITA No.443 & 442 of 2008-09, and 450/2009-10 dt.25/11/2010 in PAN/GIR No.AADCS1893D for the Assessment year 2003-04, 2006-2007 and 2007-2008 against the Assistant Commissioner of Income Tax, Company Circle VI(1), Chennai-34, in PAN AADC51893D for the Assessment year 2003-04 order dt-30/12/2008.

For Appellant : Mr.J.Narayanasawmy
Senior Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar

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 30.07.2012, in I.T.A.No. 381/ Mds/2011, by raising the following substantial questions of law:

> "(i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in

entertaining the claim for deduction of provision for rebate and other receivables amounting to Rs.15,59,85,460/- though the Assessee did not raise that issue before the Assessing Officer and the Commissioner of Income Tax (Appeals) and the claim not having been made through a valid return of income?

(ii) Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the provision for rebate and other receivables debited by the Assessee to its profit and loss account is only a provision and not written off and therefore is not allowable as deduction in computing income under normal provisions of the Income Tax Act?

(iii) Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the issue back to the Assessing Officer with regard to the claim for deduction of provision for rebate though the Tamil Nadu Electricity Board is liable to pay under the contractual obligations and that the Assessee had not issued any credit note even though TNEB did not pay the same?

(iv) Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the issue back to the Assessing Officer with regard to the claim for deduction of provision for auxilary consumption and dividend distribution tax holding that the same are credited on actual basis and not on ad hoc basis?

(v) Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in deleting interest under Section 234B and 234C are not to be levied on the additional tax payable on account of retrospective amendment to Section 115 JB, in the absence of any provision for exclusion of levy of interest in such circumstances?"

2. When the matter is taken up for hearing, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide

Circular No.17/2019 dated 8th August 2019, 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.1,00,00,000/- (Rupees One Crore).

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 withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

tar

To

1.The Income Tax Appellate Tribunal,
'A' Bench, Chennai.

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

3.The Assistant Commissioner of Income,
Company Circle VI(1), Chennai-34.

4.The Assistant Registrar
Income Tax Appellate Tribunal,
Shastri Bhavan, IIIrd floor,
Besant Nagar, Chennai-600 090.

T.C.(A).No.197 of 2013

RJI(CO)
CB(17/06/2020)