IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2020

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

T.C.A.No.219 of 2020

Pesco Beam Environmental Solutions Private Ltd,
136 Thodugudu Village, Sriperumbudhur 602 105.
.. Appellant/Appellant

Versus

The Deputy Commissioner of Income Tax,
Corporate Circle-5(2), Chennai.
.. Respondent/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, Madras 'B' Bench, dated 21.05.2020 made in I.T.A.No.2623/Chny/2017 relating to the Asst Year 2012-13.

against the order of the Commissioner of Income Tax (Appeals)-3, M.G.Road, Chennai 34, dated 31/07/2017 made in ITA.No. 102/16-17/A-3 against the order of the Deputy Commissioner of Income Tax, Corporate Circle 5 (2), M.G.Road, Nungambakkam, Chennai-34 dated 27/02/2016 made in PAN.No. AACB3079K.

For Appellant : Mr.A.S.Sriraman

For Respondent: Mr.R.Hemalatha, Standing Counsel

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

This appeal by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 21.05.2020 passed by the Income Tax Appellate Tribunal, B Bench, Chennai in I.T.A.No.2623/Chny/2017 for the assessment year 2012-13. The appeal is admitted on the following substantial questions of law:

1. Whether the appeal filed before the First Appellate Authority is maintainable in the light of the corrected / revised computation of taxable total income filed before the Income Tax Appellate Tribunal

with a pleading to admit the fresh claim and for restoring the first appeal for deciding the issues on merits?

2. Whether the provisions of Section 294(4) of the Act is applicable even after establishing the mistake in the original return of income filed in furnishing the revised computation of taxable total income before the Income tax Appellate Tribunal as a fresh/new claim to press for the right of appeal?

3.Whether the proceedings of the second appeal before the Income Tax Appellate Tribunal should be reckoned as continuation of assessment proceedings especially in the context of entertaining the revised computation of taxable total income to consider the tax imposable on the correct income?

4. Whether the Appellate Tribunal is correct in rejecting the additional/fresh claim made before them for entertaining the first appeal for want of evidences/details for supporting the revised computation of taxable total income filed before them despite such details / evidences were part of their record in the form of paper Book comprised of 271 pages, thereby establishing perversity in recording the findings of facts?

2. We have elaborately heard Mr.A.S.Sriraman, learned counsel appearing for the appellant / assessee and Ms.R.Hemalatha, learned Senior Standing Counsel who accepts notice for the respondent.

3. The assessment for the year under consideration namely Assessment Year 2012-13 was completed under Section 143 (3) read with Section 92 (C) (A) of the Act by order dated 27.02.2016. Against certain addition was made, the assessee being aggrieved, filed an appeal before the Commissioner of Income Tax (Appeals)-VI, Chennai ('the CIT (A)' for brevity). The appeal was not considered on merits and was dismissed by the CIT (A) by order dated 31.07.2017 on the ground that the assessee has not paid the self assessment tax which the assessee had admitted before the appellate authority. Aggrieved by the same, the assessee preferred an appeal before the Tribunal. The following four grounds were raised before the Tribunal:

Grounds of Appeal

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and

is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in dismissing the appeal as not maintainable.

4. For that considering the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) ought to have granted time to the assessee to pay the self-assessment tax.

4. When the appeal was taken up for hearing, the assessee raised additional grounds contending that they had inadvertently offered an income of Rs.82.37 Crores relating to inbuilt Revenue which was neither received nor accrued. The Tribunal upon considering the grounds of appeal raised by the assessee at the first instance as well as additional grounds, rejected the same by holding that the self assessment tax was admittedly not paid and there is no satisfactory evidence to substantiate the assessee's plea that the assessee has wrongly computed the income. Aggrieved by such an order, the assessee is before us by way of this appeal.

5. We have referred to the grounds of appeal raised before the Tribunal at the first instance and we find that challenge to the order passed by the CIT (A) was on the ground that the CIT (A) ought to have granted time to the assessee to pay the self assessment tax. When the appeal was heard, additional grounds were raised which we find to be entirely factual.

On the first issue as to whether the CIT (A) ought to have granted time to the assessee to pay the self assessment tax, is concerned, if we look at Sub Section 4 of Section 249 of the Act, it is made clear that unless and until, the assessee has paid the income tax due on the income returned by him, no appeal under Chapter XX will be admitted. The Statute does not neither give any discretion to the appellate authority to entertain an appeal nor extend the time for paying the self assessment tax, except in respect of cases falling under Clause b of Section 249 (4) in terms of proviso under the said Section.

6. Though such a ground raised in the appeal memorandum filed before the Tribunal, the assessee appears to have been more interested in canvassing the additional grounds with regard to offering a sum of Rs.82.37 Crores relating to inbuilt revenue which according to the assessee was an inadvertent income. In our considered view, the Tribunal has rightly held that there is

no satisfactory evidence placed before it to substantiate the assessee's plea that they wrongly computed the admitted income. Thus in the light of the above discussion, we find there is no Substantial Questions of Law much less Substantial Questions of Law arises for consideration in this Appeal. The Tax Case Appeal fails and accordingly, the same is dismissed. No costs.

7. After we have pronounced the judgment, Mr.A.S.Sriraman, learned counsel for assessee submitted that the assessee may be permitted to file a revision under Section 264 of the Act in this appeal filed under Section 260A of the Act. We have decided the correctness of the order passed by the Tribunal and held that no substantial questions of law arises for consideration. If the Statute provides for any remedy to the assessee, it is well open to the assessee to invoke such remedies in accordance with law.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax (Appeals)-3,
No.121, M.G.Road, Chennai - 34.

3.The Deputy Commissioner of Income Tax,
Corporate circle 5 (2),
M.G.Road, Nungambakkam,
Chennai -34.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No. 27184

T.C.A.No.219 of 2020

NRL(CO)
GN(23/10/2020)