

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.305 of 2018

The Commissioner of Income Tax,
Chennai.

..Appellant/Appellate

versus

M/s.Sutherland Global Services Pvt. Ltd.,
45A, Velacherry Main Road,
Velacherry,
Chennai - 600 042.

..Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.658/Mds/2016 dated 28.12.2016 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai, for the Assessment Year 2005-06 against the order of the Commissioner of Income Tax (Appeals)-15, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34, dated 17/12/2015 and made in ITA.No.436/CIT(A)-15/13-14 against the order of the Assistant Commissioner of Income Tax, Company Circle VI(4) 7th floor New Block, Room No.705, 121, MG Road, Chennai dated 31/03/2013 and made in PAN/GIR.No.AAECs8093A.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.N.V.Balaji

JUDGMENT

T.S.SIVAGNANAM, J.

This appeal by the revenue is filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), challenging the order passed by the Income Tax Appellate Tribunal 'A' Bench, Madras, in ITA No.658/Mds/2016 dated 28.12.2016 for the Assessment Year 2005-06.

2. The appeal was admitted on 04.12.2019 on the following Substantial Questions of Law:

"(i) Whether on the facts and in the circumstances of the case, Tribunal was correct in holding that the excess amount received by the assessee on reimbursement received from M/s.Symantec Corporation, USA on account of assets purchased and used by the assessee for the work towards the payee company as "Capital Receipts" as against the stand of the Assessing Officer that it was "Income from other Sources"?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in not considering the fact the above sum is not due to any sale of fixed assets exclusively and that it is received only during the course of business activity which the assessee itself credited under the head "Other Income"?"

3. We have heard Mr.J.Narayanasamy, learned Senior Standing Counsel for the appellant/Revenue and Mr.N.V.Balaji, learned counsel for the respondent/assessee.

4. After elaborately hearing the learned counsel for the parties, we find that the revenue cannot sustain this appeal for more than one reason. Firstly, the Commissioner of Income Tax (Appeals), while deciding the appeal petition filed by the assessee against the order of assessment dated 31.03.2013, partly allowed the assessee's appeal by following the decision in the assessee's own case in respect of an identical transaction for the Assessment Years 2006-07 and 2007-08. It was pointed out that since the facts of the case are identical to the Assessment Years referred above, the CIT (A) followed the order of the tribunal.

5. It is evident that as on the date when the CIT(A) allowed the assessee's appeal by an order dated 17.12.2015, no appeal was preferred before the Division Bench of this Court, questioning the correctness of the order passed by the tribunal dated 26.07.2012, for the Assessment Year 2006-07 or 08.03.2013, for the Assessment Year 2007-08. Had an appeal been preferred, revenue could have taken a stand before the CIT(A) that the decisions of the Income Tax Appellate Tribunal dated 26.07.2012 and 08.03.2013, have not been accepted by the Department and not attained finality. Since no such stand was taken, it is clear that the decisions have been accepted by the Department. Nevertheless, for the Assessment Year under consideration, the revenue thought it fit to file an appeal before the tribunal.

The tribunal took note of its earlier decisions, referred above and dismissed the appeal. Even before the tribunal, the revenue did not produce any material to show that the orders passed by the tribunal for the Assessment Years 2006-07 and 2007-08 were taken on appeal before the Division Bench of this Court.

6. Therefore, we are of the considered view that the revenue cannot maintain this appeal. For the above reasons the Tax Case Appeal is dismissed. The Substantial Questions of Law are answered against the revenue. No Costs.

Sd/-

Assistant Registrar(AD I)MDU

//True Copy//

Sub Assistant Registrar

ars/raja

To

1. The Income Tax Appellate Tribunal 'A' Bench, Chennai.
2. The Commissioner of Income Tax(Appeals)-15,
No.121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.
3. The Assistant Commissioner of Income Tax,
Company Circle VI(4) 7th Floor New Block,
Room No.705, 121 MG Road, Chennai.
4. The Commissioner of Income Tax, Chennai.

TCA No.305 of 2018

PP(CO)
KKV/14/08/2020

WEB COPY