IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

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

T.C.A.Nos.472 & 473 of 2018 & C.M.P.No.10178 of 2018

The Principal Commissioner of Income Tax
Central 1
No.108, Mahatma Gandhi Road,
Chennai. ..Appellant in both T.C.As

Versus

M/s.BGR Energy Systems Ltd,
No.443, Anna Salai,
Teynampat, Chennai - 600 018
PAN:AAB CG 2202 J ..Respondent in both T.C.As

Common Prayer:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.660/Mds/2017 and I.T.A.No.954/Mds/2017 dated 07.12.2017 relating to the Assessment Year 2010-11. Against the order of the Commissioner of Income tax (Appeals)-19, Chennai - 34, Dated 18/01/2017 in ITA no. 40/16-17 for the assessment year 2010-2011 and against the order of Additional Commissioner of Income Tax, Nellore Range, Nellore, Dated 31/03/2013 in PAN/GIR no.AABCG2202J for the assessment year 2010-2011.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing counsel
Assisted by M/s.K.G.Usha Rani
[in both T.C.As]
For Respondent : Mr.Venkatanarayanan
For M/s.Subbaraya Aiyar Padmanaban
[in both T.C.As]

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

We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, assisted by M/s.K.G.Usha Rani, learned Standing Counsel appearing for the appellant / Revenue and Mr.Venkatanarayanan for M/s.Subbaraya Aiyar Padmanaban, learned counsel for the respondent / assessee.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 07.12.2017 made in I.T.A.No.660/Mds/2017 and I.T.A.No.954/Mds/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the Assessment Year 2010-11.

3. These appeals were admitted on 24.07.2018 on the following substantial questions of law :

> "T.C.A.No.472 of 2018
>
> 1.Whether the Appellate Tribunal is justified in holding that the disallowance as per the provisions of Section 14A read with Rule 8D of Income Tax Rules, 1962 is to be restricted to the extent of exempted income earned by the assessee during the year?
>
> 2.Whether the Appellate Tribunal is correct in not appreciating the legal principle that disallowability of expenditure 14A read with Rule 8D of Income Tax Rules, 1962, as clarified by the Board's Circular No.5/2014 dated 10.02.2014, is neither conditional upon the earning of exempted income nor linked to the quantum of exempted income earned by the assessee?"
>
> T.C.A.No.473 of 2018
>
> 1.Whether the Appellate Tribunal is justified in confirming the order of the CIT (A) deleting the addition of Rs.2,06,28,478/- made towards disallowance of depreciation on technical knowhow fee paid?
>
> 2.Whether the Appellate Tribunal is justified in holding that the assessee is eligible for depreciation on value of the amount claimed to have paid towards technical know-how, by not appreciating the fact that the assessee has not acquired any capital asset in the nature of technical know-how, either fully or partly and thereby the conditions mentioned in the Section 32 (1)(ii) were not fulfilled?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in these cases are less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore these appeals to be heard and decided on merits. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//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)-19.
Chennai 34.

3. The Additional Commissioner of Income Tax,
Nellore Range, Nellore.

+1 cc to Mr. T.R. Senthil Kumar,Advocate Sr.No.36522.
+1 cc to M/S Subbaraya Aiyar Padmanabhan,Advocate Sr.No.36525.

T.C.A.Nos.472 & 473 of 2018

SSD(CO)
NS(28/12/2020)
KKV/22/02/2021