IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.9.2020

CORAM

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

T.C.A.No.713 of 2018

The Commissioner of Income
Tax, Corporate Circle-3, Chennai ...Appellant

.Vs.

1. M/s.Zylog Systems Ltd.,
   Chennai-34.

2. The Official Liquidator, High Court,
   Madras, Corporate Bhavan, II Floor,
   No.29, Rajaji Salai, Chennai-1.

   (R2 was suo motu impleaded vide order of
   court dated 29.1.2020 by NKKJ & PVJ) ...Respondents

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 25.4.2018 passed by the Income Tax Appellate Tribunal, Chennai "B" Bench in I.T.A.No.2048/Chny/2017 for the assessment year 2011-12. Against the appllate order passed by the Commissioner of Income Tax (a)-13, Chennai, dated 23.06.2017 in ITA No.230/CIT(A)-13/2011-12 and against the Assessment order passed by the Deputy Commissioner of Income Tax Corporate Circle-3(2), Chennai, dated 30.04.2015 in GIR No./PAN No.AAACZ1086G.

For Appellant : Mr.M.Swaminathan, SSC assisted by
Mrs.V.Pushpa, SC
For Respondents : No appearance

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 25.4.2018 passed by the Income Tax Appellate Tribunal, Bench 'B' Chennai (for short, the Tribunal) in I.T.A.No.2048/Chny/ 2017 for the assessment year 2011-12.

2. The above appeal has been admitted on 19.11.2018 on the following substantial question of law:

> "Whether the Tribunal was right and justified in holding that the disallowance under Section 14A read with Rule 8D should be restricted to the extent of exempted income especially when neither Section 14A nor Rule 8D provides for any such restriction?"

3. The assessee filed their return of income for the assessment year under consideration namely AY 2011-12 disclosing a total income of Rs.1,50,46,75,014/-. The case was selected for scrutiny, during which, the Assessing Officer found that the assessee was in receipt of dividend income of Rs.13,754/- and that the assessee made an investment of Rs.1,55,24,901/- in shares on 31.3.2012 whereas the total investment as on 01.4.2011 was Rs.1,23,54,78,573/-.

4. Not being satisfied with the claim that no expenditure was incurred for investment during the year for earning exempted income, the Assessing Officer disallowed the amount of Rs.3,64,27,793/- as per Rule 8D(2)(ii) of the Income Tax Rules (for brevity, the Rules) and another amount of Rs.69,70,172/- as per Rule 8D(2)(iii) of the Rules and accordingly, the assessment was completed by order dated 30.4.2015 under Section 143(3) read with Section 92CA of the Act.

5. Aggrieved by the said order dated 30.4.2015, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-13, Chennai-34, who partly allowed the appeal by order dated 23.6.2017. As against the said order dated 23.6.2017, the Revenue preferred an appeal before the Tribunal and it was dismissed by the impugned order. Challenging the same, the Revenue is before us.

6. We have elaborately heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Mrs.V.Pusha, learned Standing Counsel appearing for the appellant - Revenue. The respondents were served. However, none appears for the respondents.

7. Subsequently, it is brought to our notice by the learned Senior Standing Counsel that the first respondent - assessee is in the process of being liquidated and the Hon'ble Mr.Justice S.Rajeswaran, former Judge of this Court has been appointed as the Administrator and one Mr.S.Ulaganathan, advocate is appearing on behalf of the Hon'ble Administrator. In order to give an effective disposal, the learned Official Liquidator was suo motu impleaded as the second respondent by the earlier Division Bench by order dated 29.1.2020, notice has been served and his name has been printed in the cause list.

8. As we have been informed that the Hon'ble Administrator is now looking after the affairs of the assessee company, it is

fit and proper that the learned Administrator is heard in the matter. We find that before the Tribunal, none appeared for the assessee. However, the Tribunal recorded that it had heard the rival submissions, which would mean that both parties were heard. However, the preamble portion of the impugned order shows that none represented the assessee. Since the first respondent - assessee is under liquidation and the Hon'ble Administrator has been appointed and he is also represented through a counsel, we are of the considered view that the Tribunal can decide the matter afresh on merits after giving an opportunity to the Hon'ble Administrator represented by his counsel to put forth their submissions. For such a reason alone, we are inclined to interfere with the impugned order.

9. Accordingly, the above tax case appeal is allowed, the impugned order is set aside and the matter is remanded to the Tribunal. The Tribunal is directed to issue notice to the said Mr.S.Ulaganathan, learned counsel, office of the Official Liquidator, II Floor, Corporate Bhavan, Rajaji Salai, Chennai-1, representing the Hon'ble Administrator for M/s.Zylog Systems Limited and after hearing the Revenue as well as the Hon'ble Administrator, the Tribunal is directed to pass fresh orders on merits and in accordance with law. Consequently, the substantial question of law framed is left open.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax (A)-13, Chennai.

3. The Deputy Commissioner of Income Tax Corporate Circle-3(2), Chennai.

TCA.No.713 of 2018

eu(co)

rr ii (02/11/2020)