IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

TCA No.358 of 2017

Principal Commissioner of Income Tax 2,
No.121, Mahathma Gandhi Road,
Chennai 34 ... Appellant

vs.

M/s.H.M.Brothers Ltd.,
13, Errabulla Street,
Chennai ... Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, Madras D Bench, dated 29.04.2016 in ITA No.331/Mds/2014,

against the Order of the Commissioner of Income-Tax (Appeals)-II, Chennai in ITA No.482/2013-14 dated 28/10/2013 against the order passed by the Assistant Commissioner of Income Tax, Company Circle-II(2) Chennai dated 30/08/2011 in PAN No.AAACH2180B against the Assessment Order for the Assessment Year 1996-97 dated 05/03/2001 in PAN/GIR No.47-089-CX25410 passed by the Joint Commissioner of Wealth Tax, Special Range IX, Chennai-34.

For appellant : Mr.Karthik Ranganathan,
Senior Standing Counsel

For respondent : No appearance

JUDGMENT

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. 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, Income Tax Appellate Tribunal, Madras D Bench, in ITA No.331/Mds/2014, dated 29.04.2016, by raising the following substantial questions of law:

> "1. Whether on the facts and circumstances of the case and in law, the Tribunal was correct and justified in cancelling the penalty levied u/ s 271(I)(c) ?
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> 2. Whether on the facts and circumstances of the case and in law, the Tribunal was right and justified in holding that AO exceeded his jurisdiction in initiating the penalty proceedings u/s 271 (1)(c) when the original assessment order was set-aside by CIT(A) and in the consequential order passes u/s 143(3) r.w.s 250, the AO rightly initiated the penalty on satisfaction of concealment of income during such proceedings ?
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> 3. Whether on the facts and circumstances of the case and in law, the Tribunal erred in holding that AO cannot initiate penalty in the reassessment proceedings especially when the original assessment order does not exist as it was set-aside by CIT(A)directing the AO to pass fresh speaking order and whether such finding by Tribunal is perverse both in the eyes of law and facts?
>
> 4. Whether on the facts and circumstances of the case and in law, the Tribunal was right and justified in deleting the penalty levied on bogus depreciation claim when assessee failed to substantiate the claim by producing at least the invoice evidencing purchase of such asset?

2. When the matter was taken up for hearing, the learned 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

To

1.The Income Tax Appellate Tribunal,
'D' Bench, Madras.

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

3.The Assistant Commissioner of Income Tax,
Company Circle -II(2), Chennai.

4.The Joint Commissioner of Wealth Tax,
Special Range-IX Chennai-34.

5.The Principal Commissioner of Income Tax,
Mahatma Gandhi Road,
Chennai-600 034.

TCA No.358 of 2017

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srg 24/09/2020