IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.9.2020

CORAM

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

Tax Case (Appeal) No.629 of 2017

M/s.KEC International Limited,
(Formerly known as
RPG Transmission Ltd.,)
DLF City, Phase-II, Gurgaon,
Haryana 122 002. Appellant

Vs.

The Assistant Commissioner of Income Tax,
Corporate Circle 4(2),
Chennai 600 034. Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 29.12.2016 made in ITA No.431/Mds/2016 as agaisnt the order of the Commisioner of Income Tax (Appeals)-8, Nungambakkam , Chennai 34 made in ITA.NO.99/2013-14 dated 11.12.2015 as against the order of the Assistant Commisioner of Income Tax Company Circle V(4), Chennai in PAN NO.AABCS 2191 J dated 31.01.2014 for the Assessment Year 2008-09.

For Appellant : Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal on 29.12.2016 for the Assessment Year 2008-2009:-

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that reopening of assessment under Section 147 is valid without considering the submissions of the appellant ?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the Assessing Officer can make a disallowance on an issue, which was not raised in the reasons for reopening the assessment under Section 147? And

(iii) Whether on the facts and the circumstances of the case, the Tribunal was right in law in not following the decisions of the Bombay High Court in CIT Vs. Jet Airways(I) Ltd. [331 ITR 236] and the Delhi High Court in Ranbaxy Laboratories Limited Vs. CIT [336 ITR 136], which have held in favour of the assessee on the very same issue?"

2. Heard Mr.R.Vijayaraghavan, learned counsel appearing for the Appellant/Assessee and Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the Respondent/Revenue.

3. The learned counsels at Bar submitted that by the impugned order dated 29.12.2016, the Tribunal had set aside the order of the Commissioner of Income Tax (Appeal) and restored the entire issue to the file of the Commissioner of Income Tax (Appeal).

4. Para 9 of the order dated 29.12.2016 is quoted below for ready reference:-

"9. We considering the Apparent facts, material on record and judicial decisions are of the opinion that the re-assessment proceedings are valid and order of CIT(A) is set aside as there is no proper findings on the disputed issue and accordingly, we remit the entire issue to the file of the CIT(A) and to pass the order on merits with speaking order and assessee shall be provided an adequate opportunity of hearing before the disposal of the appeal."

5. The learned counsels further submitted that subsequent to the order of remand, the learned Commissioner of Income Tax (Appeal) has passed an order for the same Assessment Year 2008-2009 on 27th March 2019 in favour of the Assessee.

6. However, the learned counsel for the Assessee, Mr.R.Vijayaraghavan submits that as far as the finding of the learned Tribunal that the re-assessment proceedings is valid as observed in its order dated 29.12.2016, that issue deserves to be kept open if the Revenue files any Appeal as against the order of the learned Commissioner of Income Tax (Appeal) dated 27.3.2019 before the learned Tribunal.

7. In view of the subsequent development in the matter and fresh order having been passed by the learned Commissioner of Income Tax (Appeal) on 27.3.2019 for the same Assessment

Year 2008-2009, we are of the opinion that the present Appeal filed by the Assessee has become infructuous.

Therefore, leaving all the questions open, we dispose of the present Appeal as infructuous. No order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To,

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

2.The Commisioner of Income Tax (Appeals)-8,
Room No.222,Ayyankar Bhavan,
Main Building,
II Floor,121, Mahatma gandhi Road,
Nungambakkam , Chennai 34

3.The Assistant Commisioner of Income Tax Company Circle V(4), Chennai.

+1cc to Mr.Subbraya Aiyar, Advocate SR.No. 29834

A.SK(06/11/2020)