IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

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

Tax Case (Appeal) No.867 of 2017

Commissioner of Income Tax,
Chennai ... Appellant

vs.

M/s.Sri Anna Poorna re-rolling Pvt. Ltd.
F-80, SIPCOT Indus Complex,
Gummidipoondi 601 201 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B " Bench, dated 29.07.2016 in ITA No.1224/Mds/2016 against the order of the Commissioner of Income Tax Appeals 15 dated 21.01.2016 in I.T.A.No. 16/CITA-15/13-2014 in the Assessment year 2003-2004.

Against the order of the Income Tax Officer Company Ward VI (1) Chennai dated 28.12.2007 in the Assessment year 2003-2004 GIR No./PAN(WSR.320/AAFCS8305)

For Appellant : Mr.J.Narayanaswamy,
Senior Standing counsel

For respondent : Ms.Sriniranjani
for Mr.G.Baskar

JUDGMENT

(Delivered by DR.VINEET KOTHARI, J.)

The present appeal has been filed by the Revenue under Section 260A of the Income Tax Act, aggrieved by the order of the Tribunal dated 29 July 2016 in ITA No.1224/Mds/2016 for AY 2003-04, by which the learned Tribunal allowed the withdrawal of the appeal before it on the ground of CBDT Circular No.21/2015, dated 10 December 2015 as the tax effect involved in the present case was less than Rs.10,00,000/-.

2. The Revenue seems to have filed a miscellaneous application before the learned Tribunal against the said order of dismissal of the appeal as withdrawn, urging the learned Tribunal that since the reassessment for AY 2003-04 was made in

the case of the Assessee based on some audit objection raised by the Audit party of the Income Tax Department, that the Assessee was wrongly allowed 100% depreciation on MS Rolls replaced by it in the machines used by the Assessee and it was not correct according to audit party. Therefore, the exception in the said CBDT Circular No.21/2015, for withdrawal of appeal, was attracted and withdrawal of the appeal could not have been ordered by the learned Tribunal.

3. The learned Tribunal again went through the entire records and dismissed the said Miscellaneous Petition of the Revenue viz., M.P.No.70/Mds/2016 in I.T.A.No.1224/Mds/2016, for AY 2003-04 and dismissed the same on 18 January 2018, with the following observation :-

> 3. We have heard both sides, perused the materials available on record. In this case, the return of Income tiled by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ['Act' In short] on 05.02.2004. Subsequently, notice under section 148 of the Act was issued on 19.05.2006 and duly served on the assessee. In response thereto, the assessee in its letter dated 23.06.2006, stated that the original return already filed may be taken as one in response to notice under section 148 of the Act. In the same letter, the assessee asked reasons for reopening the assessment. Notice under section 143(2) of the Act was also issued on 27.06.2006. After considering the submissions of the assessee and verification of records produced by the Assessee, the assessment under Section 143 (3) r.w. section 147 of the Act was completed by making disallowance of total income as admitted before adjustment of loss as well as disallowance of depreciation claim on MS Rolls. On perusal of the assessment order passed under section 143(3) r.w. section 147 of the Act, we find that there was no mention in the assessment order that the reassessment proceedings were initiated on the basis of audit objection.
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> 4. Admittedly, the tax effect in the original appeal filed by the Revenue was less than the monetary limit of Rs.10,00,000/- fixed by the CBDT to file an appeal by the Revenue before the Tribunal as per the CBDT Circular No.21/2015 dated 10.12.2015, which was accepted by the Id.

DR. Thus, the Tribunal held that the Revenue authorities are precluded from filing the appeal before the Tribunal since the tax effect was less than Rs.10,00,000/- and accordingly, the Tribunal dismissed the appeal as un-admitted.

5.However, the Revenue has filed the present petition to recall the order of the Tribunal dated 29.07.2016 and adjudicate the issue on merits on the ground that there was audit objection and such audit objection was accepted by the Department, but, the Revenue has not filed any documentary evidence along with the petition or during the course of hearing of the petition. On perusal of the approval granted by the Principal Commissioner of Income Tax-6, Chennai under Rule 15 of Appellate Tribunal Rules, 1963, it appears that the appeal was filed by the Revenue in the regular course and not on the basis of audit objection. Therefore, it is obvious that para 8 of Circular No.21 of 2015 issued by CBDT is not applicable.

6.Further, we find that against dismissal of the Miscellaneous Petition filed by the Revenue in the case of DCIT v. Paragon Steels Pvt. Ltd. in M.P. No. 214/Mds/2016 [in I.T.A. No.887/Mds/2015] dated 03.03.2017, the Revenue preferred further appeal before the Hon'ble Madras High Court in T.C.A. No. 579 of 2017. While dismissing the appeal filed by the Revenue, the Hon'ble Jurisdictional High Court has held as under:

"3.The said miscellaneous petition was filed by the Revenue before the Tribunal on the ground that Circular No. 21/2015 of the Central Board of Direct Taxes is not applicable to the appeal filed by the Revenue. The Tribunal verified the original files and on perusal of the approval granted by the Principal Commissioner of Income Tax under Rule 15 of the Appellate Tribunal Rules, 1963, the Tribunal found that the appeal was filed in the regular course and not on the basis of the audit objections. The Tribunal ultimately concluded that paragraph 8 of Circular No.21/2015 issued by the Central Board of Direct Taxes is not applicable and accordingly, the said miscellaneous petition filed by the Revenue was rejected. The Tribunal, after having considered the factual position and verified the original files, has taken a decision in the matter and we find no substantial question of law arises for consideration in this appeal, as the entire finding is factual.

4.For the above reasons, the above tax case appeal is dismissed.

In view of the identical facts and circumstances and respectfully following the above decision of the Hon'ble Madras High Court, the miscellaneous petition filed by the Revenue stands dismissed.

7. In the result, the miscellaneous petition filed by the Revenue is dismissed.

Order pronounced on the 18th January, 2018 at Chennai.

4. The Revenue stake in the present case is admittedly much below Rs.10,00,000/-, and for High Court purposes, as per the latest CBDT Circular, the said limit is now Rs.One Crore. The depreciation in question on M.S.Rolls was only Rs. Rs.5,25,960/-. Therefore, the tax effect, on account of the said alleged audit objection, was definitely less than Rs.One crore or for that matter, below Rs.10,00,000/- before the learned Tribunal in its appeal pending before it.

5. The learned Counsel for the Revenue, Mr.J.Narayanaswamy, appearing for the Tribunal as well before this Court, could not produce any such audit objection for perusal of the Tribunal/ this court. The learned Counsel for the Appellant Revenue Mr.J.Narayanaswamy, only submitted that the Office File Noting

provided to him shows that the appeal was preferred before the learned Tribunal on the basis of some audit objection.

6. Be that as it may, the learned Tribunal has earlier permitted withdrawal of the appeal by the Revenue, as the Revenue stake was below Rs.10,00,000/- which factual position is not disputed. The mere existence of the audit objection for the present AY 2003-04 does not change the Revenue stake at all. Even the existence of the audit objection can be seriously doubted as no such audit objection has been produced before the Tribunal or before this Court for perusal. Therefore, we cannot appreciate the submission of the learned Counsel for the Revenue Mr.J.Narayanaswamy that the matter, even at this stage, should be remitted back to the learned Tribunal for deciding the appeal on merits.

7. The Appellant Revenue should appreciate and understand the letter and spirit of the CBDT Circular in the litigation policy issued by it, to withdraw, and not to press the appeal on merits, before the concerned forums viz. Tribunal or High Court, if the Revenue stake or tax effect is less than the prescribed limit. Admittedly, when the tax effect on the said issue was below the prescribed limit, we fail to understand how the existence of the audit objection in the present case, even if it is assumed to be there for argument sake, would change the position.

8. Therefore, we are not inclined to entertain the present appeal of the Revenue under Section 260A of the Income Tax Act, as in our opinion, no such question of law arises for our consideration.

9. The learned Tribunal has rightly dismissed the appeal as withdrawn in the first instance on 29 July 2016 and thereafter, the Miscellaneous Petition on 18 January 2018, for AY 2003-04.

10. The present appeal filed by Revenue is accordingly dismissed. There is no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Income Tax Appellate Tribunal,
   'B' Bench, Chennai-90
   Rajaji Bhavan
   Besant Nagar

2. The Commissioner of Income Tax (Appeals)15
   Nungambakkam,
   Chennai

3. The Income Tax Officer
   Company Ward VI(2)Chennai

+1 C to Mr. Baskar, Advocate sr 29845.

T.C.A.No.867 of 2017

MG(CO)
SP(22/10/2020)