IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.No.826 of 2018

State Industries Promotion
Corporation of Tamilnadu Ltd.,
No.19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

PAN: AAACS 4643J ... Appellant/Appellant

Vs

The Deputy Commissioner of Income Tax,
Corporate Circle - 6(2),
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondent

PRAYER : Appeal under Section 260A of Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai dated 19.07.2018 passed in I.T.A.No.1311/CHNY/2018, against the order of Principal commissioner of Income Tax, Chennai in C.No.6119/PCIT-6/2017-18 dt 19/03/18 and against the Deputy Commissioner of Income Tax, Chennai 2013-14 dated 24/3/2016.

For Appellant : Mr.G.Baskar

For Respondent : Mr.J.Narayanasamy
Senior standing counsel

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The Appellant company has been engaged with providing and maintaining of industrial complexes/parks with basic infrastructure like roads, street lights etc., and the appellant has declared total income of Rs.2,34,27,15,090/- for the Assessment years 2013-14. The appellant's case was selected for scrutiny and notice u/s.143(2) dated 04.09.2014 had been issued and assessment was completed on 24.03.2016 by making additions. The said assessment order was set aside with a direction to the Assessing Officer to redo the assessment on 09.03.2018 by the Principal Commissioner of Income Tax-6. The same was challenged before the Income Tax Appellate Tribunal by the Assessee/Appellant, where the Tribunal dismissed the Appeal on 19.07.2018. The order of the Appellate Tribunal is challenged before this Court.

2.The Appeal has been admitted on the following substantial questions of law on 23.11.2018:

(i)Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal was perverse in not considering the submissions made and the materials placed before it in the proper perspective in respect of jurisdiction of the Principal Commissioner of Income Tax in exercising jurisdiction under Section 263 of the Income Tax Act, 1961, but erroneously observing that the assessee had not filed the relevant documents to come to an exact conclusion in respect of the claim of deduction under Section 80IA of the Act?

(ii)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the Principal Commissioner of Income Tax had no jurisdiction to revise the order of the Assessing Officer, which is in violation of the 'doctrine of merger' and had exceeded in his jurisdiction in violation of Sub-Clause (c) under Explanation 1 to Section 263(1) of the Act in so far as the issue had already been the subject matter of appeal before the Commissioner of Income Tax (Appeals)? and

(iii)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Assessing Officer had erroneously allowed excess deduction under Section 80IA of the Act?

3.Heard Mr.G.Baskar, learned counsel appearing on behalf of the appellant and Mr.J.Narayanasamy, learned senior standing counsel appearing on behalf of the respondent.

4.It is evident from the records that though the appellant has raised the issue of jurisdiction of the Commissioner, under Section 263 to initiate suo motu revision especially when an appeal against Assessment Order has been filed and heard and order has been passed by the Appellate Commissioner and though the Tribunal went into the merits of the case, it has not decided about the jurisdiction. The jurisdiction point is an important point to decide the matter and therefore, the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal to decide about the jurisdiction. The above substantial questions of law are answered accordingly.

5.With the above direction, the Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income Tax,
Corporate Circle - 6(2),
No.121, Nungambakkam High Road,
Chennai 600 034.

2.Income Tax Appellate Tribunal 'C' Bench,
Chennai.

3.The Principal Commissioner of Income Tax,
Chennai-6.

+1cc to Mr.G.Baskar, Advocate SR.7862
+1cc to Mr.J.Narayanasamy, Advocate SR.8698

T.C.A.No.826 of 2018

SJ(CO)
CB(05/03/2020)