IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-382-2019 (O&M)
Date of Decision : 6.2.2020

The Pr. Commissioner of Income Tax-2, Chandigarh
...... Appellant

Versus

M/s. TDS Management Consultant Pvt. Ld. ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE AVNEESH JHINGAN
****

Present : Ms. Urvashi Dhugga, Sr. Standing counsel for the appellant.

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AJAY TEWARI, J. (Oral)

1. This appeal has been by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 27.3.2019 relating to assessment year 2014-2015 of the Income Tax Appellate Tribunal Division Bench Chandigarh, in M.A. No. 50/Chd/2019 in ITA No. 656/Chd/2018 (Annxure A-4) claiming following questions of law :-

> *(i) Whether on the facts and in the circumstances of the case, the order of the Hon'ble ITAT in dismissing the Miscellaneous application without going through the merits of the case is not perverse and the legal issue raised by revenue before it should be reinstated and decided on merits ?*
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> *(ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in dismissing the Miscellaneous application of the Revenue without discussing the merits ignoring the legislative intent expressed in CBDT's*

Circular No. 5/2014 dated 11.02.2014, which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowances irrespective of the fact whether any such income has been earned during the F.Y. or not as confirmed by Apex Court in Maxopp Investment Ltd. Vs. CIT, 91 Taxman.com 154 (SC) ?

(iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in dismissing the Miscellaneous application of the Revenue, without appreciating the fact that applicability of section 14A or Rule 8D does not depend on earning of income as held by Supreme Court in the case of CIT vs. Rajender Prasad Moody (1978), 115 ITR 519 ?

(iv) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in dismissing the Miscellaneous application and not deciding the merits, without appreciating the fact that there is no such restriction to disallow the interest to extent exempt income stipulated either in section 14A of the Income Tax Act or Rule 8D of the Income Tax Rule ?

(v) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in dismissing the Miscellaneous application and not deciding the merits, ignoring the principal of apportionment regardless of exempt income laid down by Hon'ble Supreme Court decision in CIT vs. Walfor Share and stock Brokers P Ltd : 326 ITR 1 (SC) and upheld by the Hon'ble Supreme Court in 91 Taxmann.com 154 (SC) ?

(vi) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in dismissing the Miscellaneous application of the Revenue and not deciding the merits, whereas the disallowances wa restricted by Ld. CIT (A) to the extent except income earned ignoring the fact that Hon'ble Supreme Court of India in Civil Appeal No. 1423 of 2015 filed by Avon Cycles Ltd. Decided with Maxopp

Investment Ltd. And many other cases decided the issue in favour of department ?

(vii) Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT has erred in dismissing the Miscellaneous application and not deciding the merits of the case because order of Ld. CIT Appeal is perverse in holding that it is now 'res integra' that disallowances u/s 14A cannot exceed exempt income, when Supreme Court has upheld the principles of apportionment and department is in SLP on the same issue in the cases of Moderate Leasing and Capital Services Pvt. Ltd in ITA No. 102 of 2018, A.Y. 2009-10 and Matrix Cellular Services (P) Ltd. in ITA No. 484 of 20174 and Nilgiri Infrastructure Development Ltd. in ITA No. 135 of 2016 and Instant Holding Ltd. in ITA No. 2168 of 2011 ?

(viii) Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT has erred in dismissing the Miscellaneous application and not deciding the merits of the case ignoring the legality of CBDT Circular No. 5 of 2014 which is in consonance with legislative intent behind Section 14A and the charging sections 4 and 5 of the Income Tax Act, 1961, which lay down that total income under the Act would include income from all sources whether "received", deemed to be received", "accrued" or "deemed to accrue"?

2. Brief facts of the case are that originally the appeal of the Revenue was dismissed by the Tribunal on account of low tax effect in view of the CBDT Circular No. 03 of 2018 dated 11.7.2018. Thereafter, the application for rectification was filed which was dismissed vide impugned order holding that this was outside the scope of rectification. Today, learned counsel has argued that the case was wrongly dismissed on account of low tax effect whereas it was covered by exceptions in Circular. However, when we go through the circular, the only item which could be possibly related is para No. 10 of the circular which is quoted herein below

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"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect :

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/band account."

3. The only point to which this argument can be relatable is Clause 10 (b). We asked the learned counsel where any Notification, Order, Instruction or Circular has been held to be illegal or ultra vires. Her argument is that though no Order, Notification, Instructions or Circular has been held to be legal or ultra vires but effect of the said Circular has not been correctly understood. In our considered view, that is beyond the exception clause count down by the circular.

4. Accordingly, no substantial question of law proposed arises. Consequently, the appeal stands dismissed.

5. Since the main case has been dismissed, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

6.2.2020
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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No