IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.2100 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.N.E.P.C. India Limited,
No.36, Wallajah Road,
Chennai – 600 002. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, Bench "B" Chennai, dated 07.03.2008 in I.T.A.No.1266/Mds/2002.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.1266/Mds/2002 in respect of the assessment year 1995-96 on the file of the Income Tax Appellate Tribunal “B” Bench, the Department has filed the above appeal.

2.The assessee is a Company engaged in the manufacture and sale of Wind Turbines Generators (WTG) and it is also in the business of Air Taxi. For the assessment year 1995-96, the Assessing Officer *interalia* disallowed the claim of the assessee Company towards amortization of expenditure under Section 35D. The Assessing Officer further made an estimated disallowance of 10% of the general expenses. The Assessing Officer made disallowance of Rs.2,47,13,490/- towards interest expenditure and also made addition of Rs.16.13 lakhs towards information processing charges. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT (Appeals) and the Appellate Authority allowed the appeal in favour of the assessee. Aggrieved over the same, the Department filed an appeal before the

Income Tax Appellate Tribunal and the Appellate Tribunal also confirmed the order of the CIT (Appeals) and dismissed the appeal. Aggrieved over the same, the Department has filed the above appeal.

3.The above appeal was admitted on the following substantial questions of law:

> “1)Whether on the facts and circumstances of the case, the Tribunal was right in allowing deduction of Rs.14,65,000/- on account of amortization of expenditure under Section 35D of the Act?
>
> 2)Whether on the facts and circumstances of the case, the Tribunal was right in deleting the addition of Rs.25,22,985/- being the estimated disallowance out of general expenses?
>
> 3)Whether on the facts and circumstances of the case, the Tribunal was erred in deleting the disallowance of interest when the assessee had not produced any evidence to show that the loan on which the interest was paid was taken

for the purpose of business of the assessee?

4)Whether on the facts and circumstances of the case, the Tribunal erred in deleting the addition of Rs.16.13 lakhs under the head “information and processing charges”?”

4.Heard Mr.T.R.Senthil Kumar, learned senior standing counsel for the appellant/Department and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

5.With regard to the 1st substantial question of law, the CIT (Appeals) found that as per sub-section (3) of Section 35D, the aggregate amount of expenditure referred to in sub-section (2) exceeds an amount calculated at 2½% of either the cost of the project or the capital employed in the business of the respondent, the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1) of Section 35D. The definition “capital employed in the business of the Company” as defined in explanation (b)(ii) to Section 35D(3) would apply to the case of the assessee. From the balance sheet of the Company, the capital of the Company is Rs.6614.96 lakhs. The loan funds of the Company are not from ICICI or IFCI. Therefore, they cannot be taken into consideration. 2 ½% of Rs.6614.96 lakhs comes to Rs.165.37 lakhs. The respondent is eligible for a deduction of 10% (i.e.) Rs.16.5 lakhs. The amount written off is Rs.1,05,50,000/- and the Assessing Officer allowed Rs.1,84,500/-. Therefore, the respondent is eligible for a further deduction of Rs.14,65,000/-.

6.With regard to the 2nd substantial question of law, the Tribunal concurred with the Appellate Authority stating that the disallowance is purely based on estimation without any evidence or material and the accounts of the respondent were also not rejected by the Assessing Officer. Further, the Assessing Officer has not proved or brought anything on record to prove the estimation is wrong.

7.With regard to the 3rd substantial question of law, the Assessing Officer has held that the respondent did not provide any details in regard to the compliance of provisions of Section 40(a)(i) in respect of the payment of interest or loan. The Tribunal held that the only objection of the Assessing Officer for disallowing the interest was that the respondent did not file complete details which was fully examined by the CIT(Appeals). Before the Appellate Authority, the respondent was able to substantiate that a mistake occurred in rounding of the rupee figure to thousands. Further, the interest paid on loans taken from parties outside India for the purchase of Aircraft, the respondent obtained necessary clearance for non-deduction of TDS under Section 10(15)(iv)(f). The issue with respect to the non-payment of TDS was also substantiated before the Appellate Authority. Thus, the respondent is entitled for the relief.

8.With regard to the 4^{th} substantial question of law, the respondent established before the CIT (Appeals) that the amount disallowed was paid to SITA (a society for airlines, telecommunication and information services) and the respondent being a member of SITA, had paid for the services rendered by them in respect of booking air tickets. The Tribunal having agreed to the findings on fact held that the nature of expenditure for availing of the services of SITA is not capital in nature. Further, the said expenditure is also not for acquiring any capital asset, but for availing services for better day-to-day business activities of the respondent.

9.From the above it is clear that the issues involved in the present appeal is only question of fact and the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) have given a categorical and substantial finding with regard to all the issues. We do not find any ground much less any substantial question of law to interfere with the order of the Income Tax Appellate Tribunal. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

[M.D., J.] [T.V.T.S., J.]
05.02.2021

Index : Yes/No
Internet : Yes
va

M.DURAISWAMY, J.

and

T.V.THAMILSELVI, J.

va

To

The Income Tax Appellate Tribunal, Madras, Bench "B"

T.C.A.No.2100 of 2008

05.02.2021