IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.03.2021

CORAM:

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

T.C.A.Nos.1232 & 1233 of 2010

The Commissioner of Income Tax - VIII,
Chennai. ... Appellant/Appellant in both TCAs

v.

M/s. Vairam Construction,
No.39/1, School Road,
West Extension,
Anna Nagar West,
Chennai - 600 101
PAN AACFV1410H .. Respondent/Respondent in both TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, Chennai, ''D'' Bench, dated 18.06.2010 passed in I.T.A.No.211/ Mds/2009 and C.O.No.80/Mds/2009 in I.T.A.No.211/ Mds/2009 for the Assessment Year 2000-2001 against the order of the commissioner of Income Tax (Appeals)-IV, Chennai - 34 dated 20.11.2008 made in Apeal No.CIT(A)-IV/CHE/263/06-07 and against the order of the Assistant Commissioner of Income Tax, Business Circle-IX, Chennai-6 dated 18.03.2005 made in PAN/GI No.AACFV14104 for the assessment year 2000-2001.

For Appellant (in both TCAs) : Mr. M. Swaminathan, Senior Standing Counsel

For Respondent (in both TCAs) : No Appearance

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

Challenging the common order dated 18.06.2010 passed in I.T.A.No.211/ Mds/2009 and C.O.No.80/Mds/2009 in I.T.A.No.211/ Mds/2009. on the file of the Income Tax Appellate Tribunal, Chennai, ''D'' Bench (for brevity, the Tribunal), in respect of the Assessment Year 2000-2001, the revenue has filed the above appeals.

2. The above appeals were admitted on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in quashing the notice
>
> under section 148 of the Act and pursuant to assessment under section 147 and read with 143(3) of the Act is valid?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding and allowing the cross Appeal filed by the assessee, even though the Hon'ble Supreme Court decision in the case of Rajesh Jhaveri Stock Brokers P. Ltd reported in 291 ITR 500, Income Tax Appellate Tribunal ought to have upheld the order of the Assessing Officer and decided the matter on merits ?"

3. Mr. M. Swaminathan, learned Senior Standing Counsel appearing for the appellant submitted that though the assessee had given up during the course of hearing of the appeals before the Commissioner of Income Tax (Appeals), not pressed the ground with regard to reopening assessment under section 147, the Commissioner of Income Tax (Appeals) dismissed the said ground, the Income Tax Appellate Tribunal erroneously given a finding with regard to the said ground, which was already given up buy the assessee before the Commissioner of Income Tax (Appeals).

4. On a perusal of the materials available on record, it could be seen that the Ground No.1, i.e. with regard to reopening assessment under section 147, was given up by the assessee before the Commissioner of Income Tax (Appeals). Recording the submissions of the learned AR., the Commissioner of Income Tax (Appeals) dismissed the said

ground. However, the Income Tax Appellate Tribunal took into consideration the said ground which was given up by the assessee before the Commissioner of Income Tax (Appeals) and held against the Revenue.

5. When the assessee themselves have given up the ground, the Income Tax Appellate Tribunal should not have taken into consideration the said ground and given a finding as against the Revenue. The common order passed by the Tribunal cannot be sustained on this ground alone.

6. In such view of the matter, we set aside the common order passed by the Income Tax Appellate Tribunal and remit the same to the Tribunal for fresh consideration. The Tribunal is directed to go into the merits of the matter and pass an order afresh on merits and in accordance with law.

With the above observations, both the Tax Case Appeals are allowed. However, the questions of law raised by the Revenue are left open and may be decided in an appropriate appeal. No costs.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

Rj
To
1.The Income Tax Appellate Tribunal,
Chennai, ''D'' Bench

2.The Commissioner of Income Tax(Appeals),
Chennai-34

3.The Assistant Commissioner of Income Tax Business Circle-IX, Chennai-6.

+1cc to Mr. M.SWAMINATHAN ,Advocate, SR.NO. 16592

T.C.A.Nos.1232 & 1233 of 2010

NMI(CO)
KKN 17.04.2021