IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.03.2021

CORAM:

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

T.C.A.No.301 of 2012

The Commissioner of Income Tax - 1,
Madurai. ... Appellant

Vs.

M/s.Eswari Murugan Constructions,
24A, Pappammalpuram,
Aundipatti Post,
Theni District. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 16.03.2012 in I.TA.No.447/Mds/2012 for the assessment year 2007-08, directed against the Revisional Order passed by the Commissioner of Income Tax-I, Madurai in C.No.401/06/CIT-I/2009-10 against the Assessment order passed by the Income Tax Officer, Ward-I(1), Theni in Pan No.AABFE9814B.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondent : Mr.T.Vasudevan

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

Challenging the order passed in I.TA.No.447/Mds/2012 for the assessment year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench, the Revenue has filed the above appeal.

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

> “1)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the revision order passed u/s 263 by the CIT Madurai is erroneous and not sustainable in law?

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2) whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is not required to deduct TDS when the sub-contract amounts were credited into the ledger account of the sub-contractor's which is against the provision of Section 194C?

3) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Commissioner of Income Tax has not examined whether such payments was less than Rs.20,000/- and cumulative payment was less than Rs.50,000/- which is contrary to the material evidence filed by the assessee before the Assessing Officer?”

3.The Commissioner of Income Tax, on an examination of the records of the case, found that the sub-contract payments credited was Rs.1,45,50,000/-, whereas the sub-contract amount paid was Rs.30,64,000/- and instead of making a disallowance of the entire sum of Rs.1,45,50,000/- the Assessing Authority has made a disallowance of Rs.30,64,000/- alone. The Commissioner of Income Tax held that the assessment order was erroneous and prejudicial to the interest of the Revenue. The assessee contended before the Commissioner of Income Tax that every single payment made to the sub-contractor was in fact made to the labourers and such amount paid did not exceed Rs.20,000/- and also the over all payment did not exceed Rs.50,000/- and in such circumstances, the provision of TDS is not applicable to the case of the assessee. However, the Commissioner of Income Tax rejected the contention of the assessee on the ground that the assessee had shown Rs.1,63,251/- as TDS provision for sub-contract payment. Ultimately, the Commissioner of Income Tax set aside the assessment order and disallowed a further amount of Rs.1,13,22,749/- and added the same back to the income of the assessee and determined the total income at Rs.1,53,27,510/-. As against the order passed by the Commissioner of Income Tax, the assessee preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal, after taking into consideration the case of the assessee, found that the Commissioner of Income Tax has erroneously rejected the contention of the assess with regard to the payments which were made in a manner where individual payment was less than Rs.20,000/- and cumulative payment was less than Rs.50,000/-. The Tribunal observed that without examining this crucial aspect, the Commissioner of Income Tax had rejected the case of the assessee on a technical reason.

4.It is pertinent to note that what has been credited by the

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assessee was only a provision towards possible liability and the said liability may be an actual liability or a contingent liability or the provision must have been made as a result of ample precaution by the assessee. The fact that the assessee has made a provision for TDS in its accounts does not in fact decide whether the assessee is bound by the provisions of the TDS or not. As already stated, the Commissioner of Income Tax has not given any finding that the assessee has made payments in excess of the mandatory limit prescribed for TDS or the assessee has credited the accounts of the sub-contractors with commensurate amounts.

5.It is pertinent to note that though the order passed by the Assessing Officer may be prejudicial to the interest of the Revenue, it cannot be termed as erroneous. In such case, the order passed by the Commissioner of Income Tax cannot be sustained. The Tribunal taking into consideration all these aspects, rightly set aside the order passed by the Commissioner of Income Tax and allowed the appeal. We do not find any ground much less any substantial question of law to interfere with the order passed by the Appellate Tribunal. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To
1.The Income Tax Appellate Tribunal, Chennai, "B" Bench

2.The Commissioner of Income Tax-1,
Madurai.

3.The Income Tax Officer,
Ward-I(1), Theni.

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