IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.845 of 2015

Commissioner of Income Tax,
Chennai. ...Appellant

Vs

M/s.Saber Office & School
Products Pvt. Ltd.,
No.7 A, 2nd Main Road,
IIT Colony, Narayanpuram,
Pallikaranai, Chennai – 600 100. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 08.04.2015 made in ITA.No.512/Mds/2014 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2005-2006.

The against the order Passed by the Deputy Commissioner of Income Tax, (Appeals)-VI ,Chennai-34. Dated 30/12/2013 ITA No.1342/13-14/A-VI For the assesment year 2005-2006.

The against the order Passed by the Deputy Commissioner of Income Tax, Company Circle-VI (1),Chennai in PAN No.AADCS7804A. dated 31/01/2013. For the assesment year 2005-2006.

For Appellant : Mr.J.Narayansasamy

For Respondent : Mr.N.Quadir Hoseyn

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 ['the Act' for brevity] is directed against the order dated 08.04.2015 passed by the Income Tax Appellate Tribunal [hereinafter referred to as “the Tribunal”], 'D' Bench in I.T.A.No.512/Mds/2014 for the assessment year 2005-2006.

2.The appeal was admitted on 29.09.2015 on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunalw as right in holding that the reassessment proceeding is bad in law even though the assessment proceedings under Section 143(3) was passed merely accepting the return of the assessee without dealing with the issue of addition made in the re-assessment proceedings?"

3.We have heard Mr.J.Narayanasamy, learned senior standing counsel appearing for the appellant/revenue and Mr.Quadir Hoseyn, learned counsel appearing for the respondent/assessee.

4.The issue involved in this appeal is whether the reopening of assessment for the year under consideration AY 2005-2006 which was done after a period of four years was valid or not. The Commissioner of Income Tax [Appeals][CIT(A)] upheld the validity of the reopening on the ground that in the original assessment made under Section 143(3) of the Act, the Assessing Officer has not formed any opinion on the issue which was the reason for reopening, namely, that the deferred revenue expenditure can be claimed only under Section 35 and Section 35DDA of the Act. The order passed by the CIT(A) was challenged by the assessee before the Tribunal and before the Tribunal, the assessee was able to establish that various details were called for by the Assessing Officer before completing the assessment under Section 143(3) of the Act and in this regard, referred to a communication sent by the Assessing Officer dated 20.08.2007. Further, the issue which was cited as a reason for reopening is query No.28 in the query raised by the Assessing Officer vide letter dated 20.08.2007. The assessee has explained in detail before the Assessing Officer the nature of the deferred revenue expenditure as being advertisement expenditure for promotion of its brand and it has chosen to right off such expenditure. Further the assessee has brought to the notice of the Assessing Officer that in the Notes on Accounts in para 1(a) all the relevant details were mentioned which was perused by the Assessing Officer and having been satisfied the assessment was completed under Section 143(3) of the Act. Furthermore, the assessee has disclosed in its Profit and Loss account Schedule XII, Balance Sheet of Schedule VII and Notes on Accounts para 1 (a) to the final accounts. Furthermore, the auditor's report also mentions about the same. Thus the Tribunal was right in holding that the assessee had made full and true disclosure of all relevant materials at the time of assessment and to reopen the assessment on the ground that the Assessing Officer did not consider various points raised by the assessee has been found to be factually incorrect. Thus, we find that there is no error in the approach of the Tribunal nor the ultimate relief granted to the assessee.

5.In the result, the tax case appeal is dismissed and the substantial question of law is answered against the revenue. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. Commissioner of Income Tax,(appeals)-IV
121,Mahathma Gandhi Road Chennai -34.

3. The Deputy Commissioner of Income Tax,
Company Circle -VI (1),
7th Floor, New Block,
121,Mahathma Gandhi Road Chennai -34.

4. The Commissioner of Income Tax,
Chennai

+1cc to Mr.N.Quadir Hoseyn, Advocate, S.R.No.39504
+1cc to Mr.J.Narayansasamy, Advocate, S.R.No.39590

TCA.No.845 of 2015

RQN(CO)
CT/06/09/2021