IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.07.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.886 of 2015

Commissioner of Income Tax,
Corporate Circle 3(1)
Chennai - 600 034. ... Appellant/Appellant

vs.

M/s. True Value Homes (India) Pvt. Ltd
No.21, TVH Triveni, CV Raman Road,
Alwarpet, Chennai – 600 018. ... Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 08.04.2015 in I.T.A.No.464/Mds/2015 for the Assessment Year 2010-2011 against the order of The Commissioner of Income Tax, (Appeals)-III, Chennai Dated 23/10/2014 and made in ITA.No.1914/2013-14-CIT(A)-III for the Assessment year 2010 – 2011 against the order of the Assistant Commissioner of Income Tax, Company Circle-III(2), Chennai. Dated 28/03/2013 in GIR No./PAN.NO.AAACT7955Q, for the Assessment year 2010 to 2011.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
Assisted by Mrs. V. Pushpa, JSC

For Respondent : Ms. Sriniranjani
for Mr.G.Baskar

JUDGMENT

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

Challenging the order passed in I.T.A.No.464/Mds/2015 in respect of the Assessment Year 2010-2011 on the file of the Income Tax Appellate Tribunal, Chennai, ''C'' Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The assessee company is engaged in the business of construction and sale of residential flat in and around Chennai and also letting out property. The assessee company filed its return of income declaring a taxable income of Rs.23,86,06,430/-. The return was processed and the case was selected for scrutiny. The scrutiny assessment was completed by making the additions. The additions resulted in an assessed income of Rs.38.53 crores. During the year under consideration, the assessee company has paid an amount of Rs.2,66,41,878/- as commission to Mr.N.Ravichandran, who is as the Chairman and Managing Director of the assessee company. According to the assessee, Mr.N.Ravichandran is a major shareholder with shareholding to the extent of 95%. As the above transaction directly contravenes the provisions of section 36(i)(ii), the assessee was requested to explain as to why the entire amount of Rs.2,66,41,878/- cannot be disallowed. Based on the said reasoning, the Assessing Officer entire claim of expenses on commission to the Managing Director. The assessment wss completed on 28.03.2013 under section 143(3).

2.2 Aggrieved over the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax by order dated 23.10.2014 allowed the appeal of the assessee following the assessee's own case for the assessment years 2008-2009 and 2009-2010 passed by the Income Tax Appellate Tribunal.

2.3 Aggrieved over the order passed by the Commissioner of Income Tax (Appeals), the Revenue has filed an appeal before the Income Tax Appellate Tribunal, and the Tribunal also dismissed the appeal and confirmed the order passed by the Commissioner of Income Tax (Appeals). Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

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

> " (i) Whether on the facts and circumstances of the case, the Tribunal was right in deleting the disallowance of expenditure on commission payment to the whole-time Managing Director, receiving fixed salary and other related benefits and also holding 95% of total shares of the assessee company entitled for receipt of dividend declared by the assessee company under section 36(1)(ii) of the Income Tax Act?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the whole time Managing Director of the assessee company who is in receipt of the fixed salary and other salary benefits like other employees of the assessee company is not an employee of the assessee company?"

4. When the appeal is taken up for hearing, M.Swaminathan, learned Senior Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial questions of law that arose for consideration in the above appeal had already been decided against the Revenue and in favour of the assessee in the Division Bench of this court in the Judgment in T.C.A.No.873 of 2013 wherein the Division Bench held as follows:-

> " .... 3. The appeal was admitted on the following substantial questions of law:
>
> " (i) Whether on the facts and circumstances of the case, the Tribunal was right in upholding the order of CIT(A) in deleting the disallowance made by the AO under section 36(1)(ii) of the Income Tax Act?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the rclaim of deduction made by the assessee under section 801B(10) is to be allowed?"
>
> 4. When the appeal is taken up for hearing, Mr. M.Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the issues involved in the present appeal are covered by the decision of this Court. The learned Senior Standing Counsel further submitted that so far as the 1st question of law is concerned, the same is covered by the decision of the Judgment of the Division Bench of the Delhi High Court reported in (2012) 20 Taxmann. com 647 (AMD Metplast Pvt Ltd v. Deputy Commissioner of Income Tax] wherein the Delhi High Court held as follows:-
>
> " ... 10. We fail to understand how the aforesaid observations assist and help the Revenue in the factual matrix of the present case. Ashok Gupta is the ManagingDirector and in terms of the Board resolution is entitled to receive commission for services rendered to the company. It is a term of employment on the basis of whichhe had rendered

service. Accordingly, he was entitled to the said amount. Commission was treated as a part and parcel of salary and TDS has been deducted. Ashok Gupta was liable to pay tax on both the salary component and the commission. Payment of dividend is made in terms of the Companies Act, 1956. Dividend has tobe paid to all shareholders equally. This position cannot be disputed by the Revenue. Dividend is a return on investment and not salary or part thereof. Herein the consideration in the form of commission which was paid to Ashok Gupta was forservices rendered by him as per terms of appointment as a Managing Director. In view of the aforesaid position, we answer the question of law in negative and in favour of the assessee and against the Revenue. The appeal is accordingly allowed. No costs.
....

6. Further, the Commissioner of Income Tax (Appeals) in its order has observed that the return filed by Shri.Ravichandran that he has offered the entire commission for taxation and paid tax at the maximum marginal rate without claiming any deduction. Therefore, motive of tax avoidance is also absent.

7. On a careful consideration of the materials available on record and also the judgments cited supra, it is clear that both the questions of law are covered by the judgments of the Delhi High Court and this Court. Following the same, we are of the view that both the questions of law have to be decided against the revenue. Accordingly, the questions of law are decided against the Revenue and in favour of the assessee. Hence, the Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs."

The questions of law that were decided in T.C.A.No.873 of 2013 covers the questions of law that arise for considerations in the present appeal.

5. Ms. Sriniranjani, learned counsel appearing for the respondent submitted that in view of the ratio laid down by the Hon'ble Division Bench of this Court in T.C.A.No.873 of 2013, the appeal may be dismissed.

6. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Division Bench of this Court in in T.C.A.No.873 of 2013, dated 02.03.2021, the questions of law are decided against the Revenue and in favour of the assessee. The Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2. The Commissioner of Income Tax,
   Appeals-III, Chennai.

3. The Assistant Commissioner of Income Tax,
   Company Circle-III(2), Chennai.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.32210
+1cc to Mr.G.Baskar, Advocate, S.R.No.31254

T.C.A.No.886 of 2015

SSD(CO)
HS(29/07/2021)