IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM

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

Tax Case Appeal No. 536 of 2013

The Commissioner of Income Tax,
Chennai. ... Appellant/Respondent

vs.

M/s. Sical Logistics Limited,
73, Armenian Street,
Chennai - 600 001. ... Respondent/Appellant

Tax Case (Appeal) filed under Section 260A of the Income Tax, 1961 against the order of the Income Tax Appellate Tribunal, “A” Bench, Chennai dated 24.06.2011 in M.A.No.22/Mds/2011 in I.T.A.No.1599/Mds/2009 for the Assessment Year 2005-2006.

Against the order of the Commissioner of Income Tax (Appeals)-V,Chennai 34 dated 06/02/2009 made in ITA No.402/2006-2007 of Income Tax, Company Range V, Chennai dated 31/12/2007 made in PAN/GIR No.AAACS3789B/51004S for the assessment year 2005-2006.

For Appellant : Mr.J. Narayanaswamy,
Senior Standing Counsel

For Respondent : No Appearance



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

Challenging the order passed in M.A.No.22/Mds/2011 in I.T.A.No.1599/Mds/2009 in respect of the Assessment Year 2005-2006 on the file of the Income Tax Appellate Tribunal, “A” Bench(for brevity, the Tribunal), Chennai , the Revenue has filed the above appeal.

2. The assessee filed its return of income for the

Assessment Year 2005-2006 on 28.11.2005 declaring an income of Rs.41,14,17,562/- . The return was processed under section 143 (1). The case was selected for scrutiny proceedings by issuance of notice under sections 142(1) and 143(2). Aggrieved over the Assessment Order, the assessee filed filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the amount paid to the Club following the Judgment in the case of CIT v. Sundaram Industries (240 ITR 335) and on the question of advances made to the subsidiary company amounting to Rs.73.26 crores without charging interest following the Judgment of the Supreme Court in the case of S.A. Builders reported in 288 ITR 1, ultimately, the Commissioner of Income Tax (Appeals), allowed the appeal. Aggrieved over the same, the Revenue filed an appeal before the Income Tax Appellate Tribunal, which dismissed the appeal with regard to Rule 8D being disallowance made under section 14A. On the issue regarding section 14A, the said issue was restored to the Assessing Officer to compute the quantum of expenses which should not be available for deduction after taking into consideration, provisions of Rule 8D. After the dismissal of the appeal, the assessee filed a Miscellaneous Application in M.A.No.22/Mds/2011 in I.T.A.No.1599/Mds/2009 stating that the present Assessment Year is 2005-2006 and that Rule 8D came into effect only on 01.04.2007 and therefore, the order passed should not be restored to the file of the Assessing Officer for readjudication. The Tribunal following the Judgment of the Hon'ble Bombay High court in the case of Godrej Boyce and Mfg. Col. Ltd. reported in 234 CTR 7, expunged the relevant portion of the order in the Tribunal's order dated 14.10.2010 and allowed the Miscellaneous Application. Aggrieved over the order passed by the Tribunal, the Revenue has filed the above appeal.

3. At the time of admission of the above appeal, the following substantial question of law arose for consideration:-

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in law in allowing the Misc. Application of the assessee which would amount to the review of the earlier order passed by the Tribunal and is beyond the power vested under section 254 of the I.T. Act, 1961?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in allowing the Misc. Application of the assessee by which the Tribunal had clarified that it had followed the decision of the Bombay High Court in the case of Godrej and Boyce case in the original order passed and the same would amount to review of the

order passed?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in allowing the Misc. Application of the assessee rendering a decision without giving any finding on the issue raised viz., disallowance under section 14A of the Income Tax Act?

4. Mr. J. Narayanaswamy, learned Senior Standing Counsel appearing for the appellant submitted that by allowing the the Miscellaneous Application, the Tribunal has gone beyond the scope of provision of section 254 (2) of the Income Tax Act, by expunging the relevant portion in the order dated 14.10.2010. Further, the learned counsel submitted that the Tribunal has no jurisdiction to expunge the paragraph when the provisions of section 254(2) speaks only about the mistake.

5. On a reading of section 254(2), it is clear that the Tribunal, with a view to rectify any mistake apparent from the record, may amend the order.

6. In the case on hand, the non consideration of the Judgment of the Hon'ble Bombay High Court cannot be construed as mistake as contemplated under section 254(2) . When the Tribunal has no jurisdiction to review the order passed by them, the remedy open to the assessee is to file an appeal against the order, if they are aggrieved over the same. The order passed by the Tribunal is beyond the scope of section 254(2). In these circumstances, the Tribunal should not have allowed the Miscellaneous Application in M.A.No.22/Mds/2011. In such view of the matter, the the order passed by the Income Tax Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside,. The questions of law raised in this appeal are decided in favour of the appellant-Revenue. The Tax Case Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
"A" Bench, Chennai

2. The Commissioner of Income Tax,
   Chennai

3. The Commissioner of Income Tax(Appeals)-V,
   Chennai
4. The Additional Commissioner of Income Tax,
   Company Range-V,
   Chennai

Tax Case Appeal No.536 of 2013

NMI(CO)
NS(03/05/2021)