IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.02.2021
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

T.C.A.No.465 of 2019

Principal Commissioner of Income Tax
Central 1,
No.108, Nungambakkam High Road,
Chennai-600 034. .. Appellant/Respondent

-vs-

M/s.TVH Energy Resources Pvt. Ltd.,
No.16/17, 3rd Cross Street,
TVH Novella, RA Puram, Chennai-600 028.
PAN: AAC CT 8802 G .. Respondent/Appellant

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 08.11.2018, made in I.T.A.No.3183/Chny/2017 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2012-13 filed against the order of Commisioner of Income Tax (Appeals) -18,Chennai 34 in ITA.NO.39/15-16 Dated 22.09.2017 preferred against the order of Assessment for the Year 2012-2013 PAN NO.AACCT8802G Dated 31.02.2015 passed by the Deputy Commisioner of Income Tax central circle1(2),Chennai 34.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
assisted by Ms.K.G.Usha Rani,
Junior Standing Counsel
For Respondent : Mr.G.Baskar

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal by the Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 08.11.2018, made in I.T.A.No.3183/Chny/2017 passed the Income Tax Appellate Tribunal 'D' Bench, Chennai (for brevity “the Tribunal”) for the assessment year 2012-13.

2.The appeal was admitted on 16.07.2019, on the following substantial questions of law:-

“i. Whether the Tribunal is correct in law in deleting the enhancement of addition by the

CIT(A) on account of the assessee diverting interest bearing funds to its sister concern without charging interest by holding that only if interest bearing funds are deployed outside the business of the assessee without recovering interest, such additions can be made without giving any finding as to the business purpose of the assessee in diverting such interest bearing funds?

ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was legally justified in not appreciating the principle laid down in the case of CIT vs. Abhishek Industries Ltd., [reported in 286 ITR 1 (P&H)] while deleting the interest disallowance?

iii. Whether the Tribunal was correct in law in deleting the addition of Rs.7,60,22,100/- made under Section 69C of the Act without following its earlier decision in the assessee's own case for the earlier assessment year 2011-12 wherein the case was remitted back to the Assessing Officer for re-adjudication? and

iv. Whether the Tribunal was legally right in not appreciating the ratio of the Hon'ble Supreme Court's decision in the case of Radhasoami Satsung vs. CIT [reported in 193 ITR 321] to the effect that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year?”

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usha Rani, learned Junior Standing Counsel for the appellant/Revenue and Mr.G.Baskar, learned counsel for the respondent/assessee.

4.It may not be necessary for this Court to examine the factual position, in the light of the subsequent development. After the appeal was disposed of by the Tribunal by the impugned order dated 08.11.2018, the Revenue filed miscellaneous petition in M.P.No.94/Chny/2019 before the Tribunal on the ground that the figures adopted by the Tribunal in respect of share capital were incorrect and thereby, the working of non-interest bearing funds is also incorrect. Pointing out the above, the Revenue prayed for fresh adjudication of the matter.

5.The Tribunal heard the Revenue as well as the assessee and by order dated 30.08.2019, allowed the miscellaneous petition filed by the Revenue and remitted the matter back to the file of the Assessing Officer with specific observations. The operative portion of the order reads as follows:-

> "6.Admittedly, the assessee has advanced only Rs.74,59,89,006/-. The assessee had non-interest bearing funds of Rs.70.18 crores, which includes share capital at Rs.52.10 crores and reserves & surplus of Rs.18.08 crores. By filing detailed written submissions by the ld. Counsel for the assessee, both parties have duly agreed that the interest bearing fund advanced to sister concern was only Rs.4.41 crores [74.59 crores - 70.18 crores]. Accordingly, interest disallowance has to be made on the amount of Rs.4.41 crores. Thus, we remit the matter back to the file of the Assessing Officer to determine the interest only. Accordingly, the order of the Tribunal stands rectified."

6.We are informed by Mr.G.Baskar, learned counsel for the assessee that the assessee has accepted the order passed by the Tribunal dated 30.08.2019, and the assessee has not preferred any appeal.

7.In the light of the above, there would not be any necessity to answer the substantial questions of law framed for consideration in this appeal.

8.Accordingly, the appeal stands disposed of and the substantial questions of law are left. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr

To

THE INCOME TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI.

2.PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL 1,NO.108, NUNGAMBAKKAM HIGH ROAD,
CHENNAI-600 034.

3.COMMISIONER OF INCOME TAX (APPEALS) -18,CHENNAI 34

4.THE DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE1(2), CHENNAI 34.

+1cc to Mr.T.R.Senthil Kumar , Advocate SR.No. 11080
+1cc to Mr.G.Baskar , Advocate SR.No. 10984

T.C.A.No.465 of 2019

A.SK(31.03.2021)