IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.1.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal No.466 of 2019

The Principal Commissioner of Income Tax,
Central I, Chennai-34 ...Appellant

Vs

M/s.TVH Energy Resources Pvt.Ltd.,
Chennai-28. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 08.11.2018 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai made in I.T.A.No.3117/Chny/ 2017 for the assessment year 2012-13 against the order dated 22/09/2019 passed by the Commissioner of Income Tax (Appeals) 18, Numgambakkam, Chennai-34 made in ITA No.39/15-16 for the assessment year 2012-2013 against the order dated 31/03/2015 passed by the Deputes Commissioner of Income Tax, Central Circle 1(2), Nungambakkam, Chennai-34 vide PAN/GIP.No.AACC78802G for the assessment year 2012-2013.

For Appellant: Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani, JSC

For Respondent : Mr.M.P.Senthilkumar

Judgment was delivered by T.S.SIVAGNANAM,J

The appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 08.11.2018 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai (for short, the Tribunal) made in I.T.A.No. 3117/Chny/2017 for the assessment year 2012-13.

2. The appeal was admitted on 16.7.2019 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. We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant/Revenue and Mr.M.P.Senthilkumar, learned counsel appearing for the respondent/assessee.

4. Learned Senior Standing Counsel appearing for the appellant/ Revenue seeks to withdraw the above appeal. He has also sent an email dated 19.1.2021 i.e today to that effect.

5. The email dated 19.1.2021 is recorded and shall form part of this judgment. In view of the said email, the above appeal is dismissed as withdrawn. The substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS
To

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

2. The Commissioner of Income Tax,
(Appeals) 18,
Nungambakkam,
Chennai-34.

3. The Deputes Commissioner of Income Tax,
Central Circle 1(2)
Nungambakkam,
Chennai-34.

4. The Principal Commissioner of Income Tax,
Central-1, Chennai-34.

+1cc to Mr.G. BASKAR, Advocate, S.R.No.2383
+1cc to Mr.TR. SENTHILKUMAR, Advocate, S.R.No.2440

NRL(CO)
SM (09/02/2021)