IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.03.2021

CORAM:

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

T.C.A.No. 207 of 2014

Commissioner of Income Tax,
Coimbatore. ... Appellant

v.

M/s. Hi Bright Property (India) P. Ltd.,
331, 4th Street Extn.,
Gandhipuram,
Coimbatore - 641 012. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 03.12.2013 in I.T.A.No.1636/Mds/2013 for the Assessment Year 2008-2009 filed against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 06.05.2013 in Appeal No.74/12-13 preferred against the Assessment order dated 05/08/2010 passed by the Deputy Commissioner of Income Tax Company Circle 1 (3), Coimbatore in PAN NO. AABCH77118 for the Assessment Year 2008-2009.

For Appellant : Mr. T.R. Senthil Kumar,
Senior Standing Counsel
Asst. by Ms. K.G. Usha Rani, Jr. S.C.

For Respondent : Mr. R. Sivaraman

JUDGMENT

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

Challenging the order passed in I.T.A.No.1636/Mds/2013 in respect of the Assessment Year 2008-2009. on the file of the Income Tax Appellate Tribunal, Chennai,"B" Bench, (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above 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 made by the Assessing Officer under section 40(a)(ia)?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the amendment n made to section 40(a)(ia) by Finance Act, 2010 would apply retrospectively, though the amendment is made with effect from 1.4.2010?"

3. Mr. R. Sivaraman, learned counsel appearing for the respondent-assessee submitted that the questions of law involved in the present appeal has already been decided by the the Hon'ble Supreme Court in the Judgment reported in (2018) 93 taxmann.com 51 (SC) [Commissioner of Income Tax, Kolkata v. Calcutta Export Company] wherein the Hon'ble Supreme Court held as follows:

" .... 28. The purpose of the amendment made by the Finance Act, 2010 is to solve the anomalies that the insertion of section 40(a)(ia) was causing to the bona fide tax payer. The amendment, even if not given operation retrospectively, may not materially be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assessees having substantial turnover and equally huge expenses and necessary cushion to absorb the effect. However, marginal and medium taxpayers, who work at low gross product rate and when expenditure which becomes subject matter of an order under Section 40(a)(ia) is substantial, can suffer severe adverse consequences if the amendment made in 2010 is not given retrospective operation i.e., from the date of substitution of the provision. Transferring or shifting expenses to a subsequent year, in such cases, will not wipe off the adverse effect and the financial stress. Such could not be the intention of the legislature. Hence, the amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision.

29. Further, in Allied Motors (P) Limited (supra), this Court while dealing with a similar question with regard to the retrospective effect of the amendment made in section 43-B of the Income Tax Act,1961 has held that the new proviso to Section 43B should be given retrospective effect from the inception on the ground that the proviso was added to remedy unintended

consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. The aforesaid view has consistently been followed by this Court in the following cases, viz., Whirlpool of India Ltd., vs. CIT, New Delhi (2000) 245 ITR 3, CIT vs. Amrit Banaspati (2002) 255 ITR 117 and CIT vs. Alom Enterprises Ltd. (2009) 319 ITR 306.

30. Hence, in light of the forgoing discussion and the binding effect of the judgment given in Allied Moters (supra), we are of the view that the amended provision of Sec 40(a)(ia) of the IT Act should be interpreted liberally and equitable and applies retrospectively from the date when Section 40(a)(ia) was inserted i.e., with effect from the Assessment Year 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the Section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on 01.08.2005 i.e., in accordance with the due date under the provisions of Section 139 IT Act, hence, is allowed to claim the benefit of the amendment made by Finance Act, 2010 to the provisions of Section 40(a)(ia) of the IT Act. ...."

4. On a reading of the above Judgment, it is clear that the amendment made by the Finance Act, 2010 was curative in nature and it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its return of income on 17.10.2009, as per the ratio laid down by the Hon'ble Apex Court, the assessee should be allowed to claim the benefit of the amendment made in the Finance Act to the provisions of Section 40(a)(ia) of the Income Tax Act.

5. The learned Senior Standing Counsel appearing for the appellant has not produced any contra judgment in support of the Revenue.

6 . In these circumstances, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the

Judgment reported in (2018) 93 taxmann.com 51 (SC) [cited supra] squarely applies to the facts and circumstances of the present case.

7. Following the ratio laid down in the Judgments reported in (2018) 93 taxmann.com 51 (SC) [cited supra], the questions of law are decided against the Revenue and in favour of the respondent-assessee. The Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2.The Commissioner of Income Tax Appeals-I
Coimbatore.

3.The Commissioner of Income Tax,
Coimbatore.

4.The Deputy Commissioner of Income Tax,
Company Circle 1 (3),
Coimbatore.

+1cc to M/s.T.R.Senthil Kumar, Advocate Sr.19767

T.C.A.No. 207 of 2014

gmi[co]
srg 03/05/2021