IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.03.2021

CORAM:

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

T.C.A.NO.403 OF 2014

The Commissioner of Income Tax,
Coimbatore. ... Appellant

Vs.

M/s.Joonktollee Tea and Industries Ltd.,
(formerly known as Abhyudaya Agrotech Ltd.,)
Cowcoody Chambers, 234-A, Race Course Road,
Coimbatore - 641 018. ... Respondent

Prayer:-

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 20.01.2014 in I.TA.No.1795/ Mds/2013 for the assessment year 2004-05.

Tax Case Appeal No.403 of 2014

Preferred against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore Date of order 10.07.2013, Appeal No.411/11-12, made in P.A.No./G.I.R.No.AAACC7319P and Assessment Year 2004-2005 and against the order of the Assistant Commissioner of Income Tax, Company Circle-I(1), Coimbatore made in I.T.N.S.65, P.A.No./G.I.R.No.AAACC7319P, Ward/Circle/Range Company Circle I(1), Coimbatore status company, Assessment Year, 2004-2005 and date of order 30.12.2011 and against the order of the Income Tax Officer, Company Ward I, Coimbatore made in PAN/GIR.No.AAACC7319P, Ward/Circle/Range company ward I, status company Assessment Year 2004-2005 and date of order 11.08.2006.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : no appearance

JUDGMENT

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

Challenging the order passed in I.TA.No.1795/Mds/2013 in respect of the assessment year 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai, "A" Bench, the Revenue has filed the above appeal.

2.The appellant - Revenue has raised the following substantial questions of law in the grounds of appeal:

> "1)Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal right in holding that the re-opening is not sustainable in eyes of law and that the re-opening is made only on change of opinion?
>
> 2)Whether under the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct holding that the assessee had produced all the material information required for the purpose of assessment during the course of original assessment?"

3.In the case on hand, while framing of regular assessment, the assessee had duly filed all details and particulars in support of the legal and professional expenses incurred and the Assessing Officer had examined the same. On the basis of this factual position, the Commissioner of Income Tax held that the re-opening, in question, is mere change of opinion. Admittedly, the impugned assessment year is 2004-05. The re-opening notice was issued on 28.03.2011 (i.e.) beyond the period of four years from the end of the relevant assessment year (i.e.) 31.03.2005. As per proviso to Section 148, it is clear that in the case of re-opening made beyond four years from the end of the relevant assessment year, it can only be resorted to in case of failure on the part of the assessee in disclosing, fully and truly, all material facts necessary for the assessment. However, this failure was not pointed out in the assessment order by the Assessing Officer. Therefore, it is clear that it can only be change of opinion on the part of the Assessing Officer with regard to the legal and professional expenses, which is against the provisions of proviso to Section 148. The Tribunal has rightly dismissed the appeal filed by the Revenue. The findings of the Income Tax Appellate Tribunal is proper. We do not find any ground much less any substantial question of law to interfere with the order passed by the Tribunal. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax (Appeals)-I,
   Coimbatore.

3. The Assistant Commissioner of Income Tax,
   Company Circle-I(1),
   Coimbatore.

4. The Income Tax Officer,
   Company Ward I,
   Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.17820

T.C.A.No.403 of 2014

GSM(CO)
CS/27/04/2021