IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.123 of 2015

M/s.Penta Media Graphics Ltd
(Formerly Pentafour Software and
Exports Ltd.,) 'Taurus', No.25
First Main Road, Kodambakkam
Chennai 600 024. ... Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle V(2)
121, Nungambakkam High Road
Chennai 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A'.Bench, Chennai, dated 17.01.2012 in I.T.A.No.957/Mds/2011.

For Appellant : Mr.G.Baskar

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

J U D G M E N T

(Delivered by R.SURESH KUMAR,J.)

By order dated 24.03.2015, this appeal has been admitted on the following substantial questions of law :

1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming that the Commissioner of Income Tax has the requisite jurisdiction under Section 263 of the Income Tax Act to pass the impugned order dated 24.03.2011?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not considering or concluding that the order under Section 263 of the Act, dated 24.03.2011 is barred by limitation in respect of assessment year 2002-03?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the order under Section 263 of the Act on the aspect of grant of depreciation?"

2. Heard Mr.G.Baskar, learned counsel for the appellant / assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondent / Revenue.

3. The matter relates to Assessment Year 2002-03. The assessee filed income tax returns on 31.10.2002, which was processed and an order of assessment was passed on 28.02.2005 by the Assessing Officer, where, though depreciation has been given, it has not been given under the provisions of the Income Tax Act, but under the provisions of the Companies Act.

4. Aggrieved over the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (in short 'CIT(A)'), which was decided on 26.08.2005 directing the Assessing Officer to remove the depreciation calculated and given under the Companies Act and calculate the depreciation to be given under the Income Tax Act. Subsequently, a rectification order was passed by the Assessing Officer, of course by giving effect to the direction given by the CIT(A), by an order of the Assessing Officer dated 24.07.2007 giving such depreciation under the provisions of the Income Tax Act.

5. In the meanwhile, as against the order passed by the CIT(A) dated 26.08.2005, in respect of the other grounds both the Revenue as well as the assessee preferred appeals before the Income Tax Appellate Tribunal (in short 'ITAT'). Those appeals were also disposed of by the ITAT by order dated 24.03.2008.

6. On 03.07.2008, though the Assessing Officer having stated that in implementing the order passed by the ITAT dated 24.03.2008 he passes a fresh order on 03.07.2008, where the Assessing Officer has given depreciation as per the Income Tax Act, but at the same time not removed the depreciation calculated and given already under the Companies Act.

7. It is also to be noted that parallely, a notice was issued under Section 148 of the Act. Ultimately, there has been a re-assessment order dated 31.12.2008 under Section 147 of the Act.

8. Be that as it may. Subsequently, having verified the order passed by the Assessing Officer dated 03.07.2008 giving the depreciation not only under the Income Tax Act but also not removing the depreciation already been given under the Companies Act, the revisional authority, by invoking his revisional power under Section 263 of the Act, had issued a show cause notice on 09.03.2011.

9. Pursuant to the show cause notice, though written submissions had been given, it was considered and ultimately orders have been passed by the revisional authority on 24.03.2011 removing the depreciation under the Companies Act, without which since the depreciation having been calculated and given to the assessee by the Assessing Officer by order dated 03.07.2008, giving

depreciation both under the Income Tax Act as well as the Companies Act, that order dated 03.07.2008 passed by the Assessing Officer was set aside and the Assessing Officer was directed to add back the book depreciation of Rs.54,18,33,000/- and verify and allow the claim of depreciation in accordance with the direction of the CIT(A), after giving adequate opportunity to the assessee.

10. Aggrieved over the same, the assessee preferred further appeal to the ITAT. The same was also disposed of on 17.01.2012, which order is impugned in the present Tax Case Appeal.

11. Though attempt has been made by Mr.G.Baskar learned counsel for the appellant assessee by raising the aforesaid substantial questions of law to assail the jurisdiction of the revisional authority in exercising the power under Section 263 of the Act, having taken note of the aforesaid facts, we do not hesitate to hold that the order passed by the revisional authority under Section 263 of the Act dated 24.03.2011 setting aside the order passed by the Assessing Officer dated 03.07.2008 is perfectly correct.

12. The reason being that, while reassessing the issue of course after the CIT(A)'s order, even though it has been stated as if that it is pursuant to the ITAT's order only the order dated 03.07.2008 has been issued by the Assessing

Officer, the Assessing Officer though has given depreciation under the Income Tax Act, has failed to note that the depreciation given under the Companies Act has already been there and it ought to have been removed. But, it has not been removed or deducted.

13. When that being so, it is a complete error on the part of the Assessing Officer in passing such an order dated 03.07.2008. This has been pointed out by the revisional authority, who exercised his power under Section 263 of the Act by issuing the show cause notice dated 09.03.2011, where the Assessing Officer has not added the depreciation of Rs.54,18,33,000/- already debited to the Profit and Loss Account since in the computation of income, the assessee had arrived at a net profit of Rs.98,13,73,000/-.

14. This erroneous order of the Assessing Officer dated 03.07.2008 has been set aside by the revisional authority while exercising his power under Section 263 of the Act by passing the order dated 24.07.2011, of course correctly and this has been noted and as rightly observed in the impugned order by the ITAT that it has resulted in excessive benefit to the assessee. Therefore, the impugned order dated 17.01.2012 passed by the ITAT also cannot be said to be infirm one. Therefore, we do not feel that the order impugned deserves to be interfered with.

15. In the result, this Tax Case Appeal fails and it is dismissed. The questions of law are answered against the appellant / assessee and in favour of the respondent / Revenue. No costs.

(R.S.K.,J.) (C.S.N.,J.)
11.11.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Income Tax Appellate Tribunal, 'A' Bench, Chennai.

R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

KST

T.C.A.No.123 of 2015

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