WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM

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

Tax Case Appeal No.124 of 2015
and M.P.No.1 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.958/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.)

This appeal has been admitted on the following substantial questions of law :

WEB COPY

1. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not holding that the order of revision u/s.263 of the Act dated 24.03.2011 is wholly barred by limitation?*
2. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming that the Commissioner of Income Tax Act to pass the impugned order dated 24.03.2011?*
3. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the order of revision u/s.263 of the Act of the allowability of interest payment amounting to Rs.335.76 lakhs?*

2. This appeal relates to the assessment year 2003-04. Initially, the order of assessment was passed in favour of the assessee with regard to the revenue expenditure claimed by way of paying interest for the loan which has been taken on behalf of the assessee company from Global Trust Bank in order to utilize the same for launching an employees Welfare Scheme called ESOP by which shares would be given to the employees.

3. Ultimately, because the share prices have increased, the employees opted out from the Scheme and therefore the Scheme could not be worked out. Hence, the money which was lying with the assessee company by way of share

WEB COPY

application money had been utilized by the assessee company in its business. At one point of time, which relates to the assessment year 2003-04, the loan for a sum of Rs.27,98,00,000/- itself has been taken over by the assessee Company and therefore, in order to make the payment of interest to the bank, whatever expenditure that had been incurred by the assessee company during the assessment year 2003-04 which was claimed as revenue expenditure, has in fact been allowed by the assessing authority in its assessment order dated 01.12.2023 and subsequently in the order under Section 147 on 31.12.2008.

4. However, this was found to be against the interest of the Revenue by the Commissioner of Income Tax [CIT]. Therefore, he invoked his revisional power under Section 263 of the Income Tax Act and passed an order on 24.03.2011 reversing the assessment order and remitting the matter back to the assessing officer to re-look into the matter.

5. As against the said order under Section 263 of the Act, the assessee preferred an appeal before the Income Tax Appellate Tribunal and during the pendency of the appeal before the Tribunal, the assessing authority, in pursuance of the CIT order under Section 263 of the Act, passed a fresh assessment order on 15.12.2011, reversing the claim made by the assessee for allowing the payment of money towards the interest as revenue expenditure.

WEB COPY

6. Aggrieved over the said order passed by the assessing authority dated 15.12.2011, the assessee preferred an appeal once again before the CIT (A). In the meanwhile, the Income Tax Appellate Tribunal, by an order dated 17.01.2012, disposed of the appeal filed against the CIT order under Section 263 of the Act dated 24.03.2011, where the jurisdiction has been confirmed.

7. The said appeal filed by the assessee against the assessment order dated 15.12.2011 before the CIT(A) was decided in favour of the Revenue and against the assessee by an order dated 31.03.2015. Aggrieved over the same, the assessee preferred further appeal to the Income Tax Appellate Tribunal, where also it has been confirmed by the Tribunal by an order dated 29.07.2022. Therefore, the assessing officer had once again passed a fresh assessment order on 24.01.2024 against the assessee and in favour of the Revenue. That was again appealed by the assessee in the latest appeal filed before the CIT (A), where the appeal is still pending.

8. On the basis of these factual matrix, now virtually the issue is pending before the CIT(A) in the latest appeal filed by the assessee against the latest assessment order dated 24.01.2024. Therefore, those aspects cannot be gone into in this appeal before us.

WEB COPY

9. Insofar as the other ground raised by the appellant in this appeal with regard to the limitation is concerned, since the learned Standing Counsel for the Revenue has produced the show cause notice dated 17.12.2008 wherein the reason for re-assessment has been clearly stated, the question of raising the limitation point does not arise, which in fact has been fairly conceded by the learned counsel for the appellant / assessee. Therefore, the first question of law raised in this appeal need not be answered and the same has been accepted by the assessee. The other questions of law viz., 2 and 3 cannot be gone into at this stage in view of the aforesaid factual matrix viz., currently the appeal is pending with CIT(A), let the appeal be decided on merits and in accordance with law and thereafter it is open to the parties to agitate the issue depending upon the outcome of the appeal before the CIT(A).

10. With the above observations, this Tax Case Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) **(C.S.N.,J.)**
21.10.2024

NCS : Yes/No
Index : Yes/No
KST

To

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

WEB COPY

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

KST

T.C.A.No.124 of 2015

21.10.2024