IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **03-09-2024**

CORAM:

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

Tax Case (Appeal) Nos.175 and 176 of 2024
and C.M.P.No.18662 of 2024

The Pr.Commissioner of Income Tax-1
Chennai. .... Appellant in both the cases

-vs-

M/s. Chennai Radha Engineering Works Pvt., Ltd.,
No.40, Sapthagiri Colony,
K R Layout, Jafferkhanpet,
Chennai - 600 083.
PAN : AACCC6068R .... Respondent in both the cases

Common prayer : Appeals preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C; Bench, Chennai, dated 31.01.2023 in I.T.A.Nos.2011 & 2012/Chny/2019 for the Assessment Year 2009-10 and Assessment Year 2010-11.

For Appellant : Mr.T.Ravi Kumar
Senior Standing Counsel
in both the appeals

For Respondent : Mr.A.S.Sriram
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J**)

These two Tax Case Appeals arise out of the common order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai in I.T.A.No.2011 & 2012/Chny/2019, dated 31.01.2023. Both these appeals were heard together and are disposed by this common order.

2. The relevant Assessment Years are 2009-2010 and 2010-11. The respondent assessee engaged in the business of manufacturing of components and spares for conveyor systems. It has filed its return of Income Tax for the Assessment Year 2009-10 on 30.09.2009, whereby it has admitted the total income of Rs.8,40,88,420/-.

3. The case was selected for scrutiny and notice under Section 143(2) of Income Tax Act, 1961, in short, “the Act” was issued on 20.08.2010. Thereafter after obtaining the final accounts, audit report and other records notice under Section 142(1) of the Act, dated 09.11.2011 was also issued.

4. In response to the said notice, the representative of the assessee appeared before the Assessing Officer and had furnished complete set of details as required by notice under Section 142(1) of the Act. The said details furnished by the assessee having been examined by the Assessing Officer, he has completed the assessment under Section 143(3) of the Act on 16.12.2011.

5. When that being so, after four years period, the Assessing Officer, in order to reopen the assessment under Section 147 of the Act had issued notice under Section 148 of the Act.

6. The main ground for such reopening was that, the assessee had claimed depreciation of the machineries at the site at 30%, whereas he is eligible only for 15%, thereby there has been an escapement of income, hence, in order to reopen the assessment, notice under Section 148 was issued.

7. After calling explanation from the assessee and having considered the same, the Assessing Authority had completed the assessment under Section 143(3) r/w Section 147 of the Act on 02.11.2016, by which, the Assessing Authority has disallowed the alleged excess depreciation claimed by the assessee for the Assessment Year 2009-2010. There are similar facts in respect of the Assessment Year 2010-11 also.

8. As against the order of assessment, dated 02.11.2016, the assessee filed appeal before Commissioner of Income Tax (Appeals), in short "the CIT (Appeals)" and the assessee had challenged the reopening of the assessment itself under Section 147/148. The CIT (Appeals) having considered all the facts and circumstances of the case quashed the re-assessment proceeding and on merits also, the learned CIT (Appeals) deleted the addition made by the Assessing Officer.

9. Felt aggrieved over the said order passed by the CIT (Appeals), the Revenue has preferred appeal before the ITAT, raised certain grounds against the order passed by the CIT (Appeals). The Tribunal having gone

into the facts of the case has come to the conclusion that the very reopening under Section 147/148 of the Act itself was without jurisdiction or not permissible, therefore on that ground itself, the Appeals filed by the Revenue before the Tribunal was dismissed by the order, dated 31.01.2023. Against which, the present Tax Case (Appeals) were filed by the Revenue.

10. Heard Mr.T.Ravi Kumar, learned Senior Standing counsel appearing for the Revenue. He has canvassed the point that, the Tribunal ought not to have held that the reopening itself under Section 147/148 of the Act is untenable or without jurisdiction and such a finding ought not to have been given by the Tribunal, without going into the merits of the case, especially in the context of the depreciation claim wrongly made by the assessee for the machineries and equipments at the site.

11. The learned counsel also would submit that, since the assessee is entitled to claim the depreciation only at 15%, however he has claimed 30% depreciation, if the same was allowed even under the scrutiny assessment under Section 143(3) of the Act, because of the escapement of the tax to the

extent of 15% excess depreciation allowed as claimed by the assessee by the Assessing Authority and once such factor is noticed which would very well make the Assessing Authority to reopen the assessment under Section 147 by issuing notice under Section 148 of the Act. Therefore the learned Senior Standing counsel would submit that, without going into the merits of the issue, at the threshold, since the Tribunal has come to the conclusion that, the reopening itself is wrong and thereby not has gone into the merits of the case, is unjustifiable. Therefore the grounds and the Substantial Question of Law raised in this Tax Case (Appeals) are to be answered in favour of the Revenue. Therefore to that extent, these Appeals are to be entertained he contended.

12. We have considered the said submissions made by the learned counsel appearing for the Appellant Revenue and have perused the materials placed before this Court.

13. Insofar as the reopening of the assessment under Section 147 and 148 of the Act is concerned, the scrutiny Assessment Order was passed on

16.12.2011, before which notice under Section 143(2) was issued and whatever the details called for by the Assessing Authority had been provided or supplied by the assessee. Insofar as the claim that has been made with regard to the depreciation of the equipments and machineries at the site is concerned, it has been claimed and disclosed in the documents that were placed before the Assessing Authority for consideration. This aspect has been considered by the Tribunal in detail in para 8.1 of the order impugned which reads thus :

> "8.1. During the course of scrutiny assessment proceedings, the Assessing Officer has issued notice under section 143(2) of the Act dated 20.08.2010 calling all the details from the assessee in respect of return filed particularly, the Assessing Officer has asked fixed asset schedule as per the provisions of the Income Tax Act. On 09.11.2011, the assessee has filed fixed asset schedule as per the provisions of Income Tax Act vide page 9 of the paper book S.No.18. The assessee has also filed fixed asset details by letter dated 15.11.2011 as per page 10 and 11 of the paper book. By examining all the details furnished

by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act, dated 16.12.2011. We find that the reopening of assessment in this case is beyond four years. As per proviso to section 147 of the Act there must be failure on the part of the assessee to disclose fully and truly all the materials facts for completing the assessment. In this case, by considering the paper book page 4, 5, 6, 9 & 11, we of the considered opinion that the assessee has filed all the details in respect of depreciation claim made by the assessee. Therefore, it cannot be said that there is failure on the part of the assessee to disclose fully and truly all the material facts for completing the assessment. The Assessing Officer, in the reasons recorded, simply mentioned that there is a failure on the part of the assessee. The Assessing Officer has not able to establish that there is a failure on the part of the assessee. Thus, in our considered opinion, the notice issued under section 148 of the Act is invalid."

14. Since the reopening of the Assessment in the case in hand is beyond four years, for which it must have been established by the Revenue that there is a failure on the part of the assessee to disclose fully and truly all the material facts for completing the assessment.

15. However the Tribunal being the last fact finding authority has found that, the assessee had filed fixed asset details by letter, dated 15.11.2011 as per page 10 and 11 of the paper book. The Tribunal also found that, by considering the paper book page No.4, 5, 6, 9 and 11, the Tribunal was of the considered opinion that, the assessee has filed all the details in respect of the depreciation claim made by the assessee,

16. Therefore the Tribunal has come to the conclusion that, it cannot be said that there is failure on the part of the assessee to disclose fully and truly all the material facts for completing the Assessment.

17. Therefore it has become clear that, all the factors which are required by the Assessing Authority to assess completely since had been

made available before the Assessing Authority and after having considered the same under scrutiny assessment under Section 143(3) of the Act since the assessment was completed as early as on 16.12.2011, absolutely there has been no other reason or scope available before the Assessing Authority to reopen the same under Section 147/148 of the Act.

18. Since in the case in hand, it was admittedly beyond four years, the failure on the part of the assessee in disclosing the factors fully and truly should have been established by the Assessing Authority, which the Assessing Authority had not established and those factor had been found out in favour of the assessee and against the Revenue by the Tribunal being the last fact finding authority.

19. The said view taken by the Tribunal for the reasons and discussions made by the Tribunal in the impugned order is to be accepted.

20. Once the very notice issued under Section 148 of the Act to reopen the Assessment under Section 147 itself is found to be an invalid

one, the question of proceeding further on the issue does not arise.

21. Therefore the said reasoning given as well as the conclusion reached by the ITAT is to be accepted. Hence we are of the considered view that, absolutely there has been no Substantial Question of Law arises in these Tax Case (Appeals) to adjudicate and decide.

22. In that view of the matter, both these Appeals are liable to be dismissed, hence accordingly are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(C.S.N., J)**
03.09.2024

Index : Yes / No
Speaking order / Non-speaking order

tsvn

To

The Income Tax Appellate Tribunal,
'C' Bench, Chennai

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

tsvn

Tax Case (Appeal) Nos.175 and 176 of 2024

03.09.2024