IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble MR.JUSTICE M.SUNDAR

T.C.A.No.555 of 2017

Commissioner of Income Tax
Non Corporate Ward – 10,
Chennai .. Appellant

-vs-

M/s.Tagros Chemicals (India) Limited,
Jhaver Centre, Raja Annamalai Building,
19, New No.72, Marshals Road,
Egmore, Chennai 600 008. .. Respondents

Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 06.02.2017 in I.T.A.No.528/Mds/2016 for the Assessment Year 2010-11.

For Appellant : Mr.M.Swaminathan

For Respondent : Mr.M.P.Senthilkumar

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.M.Swaminathan, learned Standing Counsel appearing for the appellant and Mr.M.P.Senthilkumar, learned counsel, accepting notice on behalf of the respondent/assessee. With the consent on either side, the appeal itself is taken up for disposal.

2.The Revenue has filed this appeal against the order passed by the Income Tax Appellate Tribunal in I.T.A.No.528/Mds/2016 dated 06.02.2017, by framing the following substantial questions of law:

(i) *Whether the Tribunal was right in remitting the issue to the file of the Assessing Officer to re-examine the donation made u /s 35AC even though the President of the eligible Trust has not received such donation and informed that police complaint has been lodged for defrauding the Trust name by unknown persons in connivance with the private bank officials in Kolkata ?*

(ii) *Whether the Tribunal was right in remitting the issue of donation made u/s.35AC back to the file of the Assessing Officer without considering the fact that the assessee has copy of certificate in Form 58A only* *to the tune of Rs.1 crore whereas the total claim of the assessee was Rs.2.50 crores ?*

(iii)Whether the Tribunal was right in holding that the Registration Fees and other related payments constitute intangible assets and eligible for depreciation within the meaning of "business or commercial rights" u/s 32(1)(ii) in view of the fact that registration of pesticides in a particular country cannot be termed as any intangible aseet listed in section 32(1)(ii) of the Income Tax Act, 1961 ?

3.The facts which led to the filing of the present appeal are that the assessee-company is in the business of manufacturing pesticides and chemicals and had filed its return of income for the Assessment Year 2010-11 on 23.09.2010 with a taxable income of Rs.19,33,06,870/-. The case was selected for scrutiny and notice under Section 143(2) was served on the assessee. The assessee claimed deduction for donation of Rs.2.5 crores to M/s.Mahila Utkarsh Sansthan Trust in Indore, Madhya Pradesh under Section 35AC of the Income Tax Act, 1961. The donations were made on various dates through the assessee's bank account maintained with the State Bank of India and the Kotak Mahindra Bank at Kolkata. The assessee has produced a copy of Form 58A issued by the President of the Trust for an amount of Rs.2.00 crores. The Assessing Officer sent a letter confirming the entire donation of Rs.2.50 crores. The President of Mahila Utkarsh Sansthan Trust, one Dr.Sonia Sharma, stated that the bank account with Kotak Mahindra Bank has been fraudulently opened by unknown person with the help of bank officials and the money was withdrawn and that they have not received donation as claimed by the assessee. The said Trust also claimed that a criminal complaint has been lodged with the Kolkata police that their registered office is only in Indore and they have no other branches. The assessee was confronted with this information and was called upon to prove that the fund is utilised for the intended purpose.

4.On the above contention, the Assessing Officer completed the assessment by order dated 25.03.2013. Two issues arise for consideration, namely with regard to the donation which has been given by the assessee and the same being denied by the Trust. The second issue being the claim for depreciation with regard to payment of registration fee charges, which the assessee claimed to be on account of intangible asset, as by virtue of such registration, they are entitled to export their products and market it in such countries where registration charges are being collected. Both the issues were decided against the assessee and the assessment was completed. On appeal to the Commissioner of Income-tax (Appeals) (in short 'CIT (A)'), the said finding of the Assessing Officer was affirmed, however, there is no independent finding rendered by the CIT (A).

5.On further appeal to the Tribunal, on the first issue with regard to the donation, the Tribunal has remanded the matter to the Assessing Officer for fresh consideration by following a decision in the case of M/s.Mangal Tech Park Pvt. Ltd. in I.T.A.No.1439/Mds/2014 and 2084/Mds/2015 for the Assessment Year 2008-09, vide order dated 17.06.2016. With regard to the second aspect pertaining to the payment of registration fee charges, which the assessee claimed to be equitable to an intangible asset, the Tribunal granted the relief to the assessee by placing reliance on a decision of the Hon'ble Supreme Court in Techno Shares and Stocks Ltd., reported in (2010) 327 ITR 323 (SC).

6.After elaborately hearing the learned counsel for the parties, we find that the order of the Tribunal remitting the matter to the Assessing Officer on the first issue is just and proper. However, we do not approve the rider attached by the Tribunal in paragraph 9 of its order while remitting the issue to the Assessing Officer. If, according to the Tribunal, the Assessing Officer has to conduct a similar exercise as that was directed to be conducted in *M/s.Mangal Tech Park Pvt. Ltd.* (supra), it should have been an open remand, but not a qualified remand. Therefore, we are inclined to interfere with that portion of the direction issued by the Tribunal in paragraph 9 and declare that the first issue shall be remitted back to the Assessing Officer, who shall re-examine the matter independently and afresh, without being influenced by the observations made by him in the assessment order or the observations of the CIT (A) or that of the observations of the Tribunal.

7.With regard to the second issue, wherein the assessee claimed that the payment of registration fee to be equitable to an intangible asset, we find that the finding of the Tribunal is not supported by reasons, especially on the factual aspect as to what is the effect of payment of the registration fee for acquiring such a licence. That apart, the assessee's alternate claim that it should be treated as a revenue expenditure has also been negatived by the Assessing Officer. We find that the Assessing Officer, in paragraph 4.2 of the assessment order, has not given independent reason as to why the alternate submission of the assessee is not accepted. Therefore, we find that the finding of the Tribunal in paragraph 13 on the second issue, in our considered opinion, has been rendered without going into the commercial aspect of the effect of the registration fee paid by the assessee, which, even according to the Assessing Officer, is a huge expense. Therefore, we feel that the second issue also should be remanded to the Assessing Officer for fresh consideration giving liberty to the assessee to raise all issues including the alternate plea that it should be treated as a revenue expenditure.

8.Thus, for the above reasons, we find that the substantial questions of law (i) and (ii) as raised by the Revenue revolve on facts and we have sustained the order of the Tribunal remitting the matter to the Assessing Officer for fresh consideration making it clear that it is an unqualified remand leaving open all the issues to be decided by the Assessing Officer. With regard to question no. (iii), we have found that a thorough exercise has not been done to examine the contention raised by the assessee and the Assessing Officer did not give independent reason for rejecting the alternate submission made by the Assessing Officer. Therefore, on that aspect also, we remand the matter to the Assessing Officer for fresh consideration.

9.With the above observations and directions, this Tax Case Appeal stands disposed of. No costs.

(T.S.S., J.) (M.S., J.)
28.11.2017

Index : Yes/No
Website : Yes/No

sra

To

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

2.The Commissioner of Income-Tax
(Appeals)-II, Chennai.

3.The Asstt. Commissioner of Income-Tax,
Company Circle III (1), Chennai.

T.S.Sivagnanam, J.
and
M.Sundar, J.

(sra)

T.C.A.No.555 of 2017

28.11.2017