IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.2.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal No.113 of 2021

The Commissioner of Income
Tax, Chennai-34. ...Appellant

Vs

M/s.Ananya Infra Structure Pvt.
Ltd., Chennai-41. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 09.5.2018 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.No.2389/Chny/2017 for the assessment year 2010-11.

For Appellant: Mr.T.Ravikumar, SSC
For Respondent : Mr.Ashok Pathy for M/s.Pass Associates

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 09.5.2018 in I.T.A.No.2389/Chny/2017 on the file of the Income

Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) for the assessment year 2010-11.

2. The Revenue has filed this appeal by raising the following substantial questions of law:

> *"i. Whether the Tribunal was right in remanding the issue back for verification of inflated expenditure for the assessment year 2011-12 while allowing relief for another assessment year 2010-11 when the facts are similar on the same issue without there being any change in the circumstances for both the assessment years ? And*
>
> *ii. Whether the inflated expenditure admitted by the assessee is to be allowed despite the fact that the assessee could not reconcile the statements nor could prove the same with supporting documentary evidence?"*

3. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.Ashok Pathy, learned counsel appearing on behalf of M/s.Pass Associates, learned counsel accepting notice for the respondent/assessee.

4. The assessee is a company dealing in construction activities

and other related works. They filed their return of income on 14.10.2010 for the assessment year under consideration namely 2010-11 admitting taxable income to the tune of Rs.17,99,720/-. The case was selected for scrutiny and a notice under Section 143(2) of the Act dated 26.8.2011 was issued. Thereafter, the assessment was completed.

5. Subsequently, a survey under Section 133A of the Act was conducted on 17.9.2012 and the assessee admitted an amount of Rs.6 Crores as inflated expenditure and offered the same as undisclosed income of the assessee. Further, the Assessing Officer addressed a letter dated 11.9.2013 to the assessee calling upon them to file a revised return disclosing the said income, which was offered during survey. The assessee was also asked to file certain information during the course of regular assessment proceedings. After taking into account all the details, the assessment was completed.

6. The Assessing Officer found that the assessee was awarded a contract by M/s.Marg Limited for development work at a site in Gujarat. The work order dated 05.10.2010 mentioned the value of the work at Rs.10,08,03,024/-. The said work was sub-contracted by the

assessee to M/s.Coastal Projects Private Limited for a value of Rs.10,26,80,000/-. The Assessing Officer found this to be a discrepancy namely the value of the sub-contract work was higher than the value of the work awarded to the assessee by the said M/s.Marg Limited. The assessee was called upon to explain the same. It appears that the assessee did not produce any document to reconcile the discrepancy and therefore, the Assessing Officer held that the genuineness of the expenditure claimed under the cost of operation for Rs.9,88,56,012/-, out of which, the expenditure pertaining to the said M/s.Coastal Projects Private Limited was for a sum of Rs.9,63,25,478/- was unable to be proved by the assessee. Hence, the Assessing Officer held that apart from Rs.6 Crores, which was offered by the assessee during the course of survey, a sum of Rs.1,81,50,000/- was also disallowed on the balance amount of Rs.3.6 Crores and added to the total income of the assessee.

7. Aggrieved by such an order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-5, Chennai-34 [for brevity, the CIT(A)]. On this issue, the CIT(A) afforded an opportunity to reconcile the discrepancy. The CIT(A), in paragraph 7.3 of his order dated 20.7.2017, recorded that the assessee neither reconciled the

difference nor filed any explanation for the discrepancies between the work order received from the said M/s.Marg Limited and the work order given on the sub-contract to the said M/s.Coastal Projects Pvt. Ltd., and that the assessee did not substantiate the genuineness of the expenditure claimed under cost of operations pertaining to the said M/s.Coastal Projects Pvt. Ltd. With these observations, the additions towards disallowance of Rs.1,81,50,000/- out of the expenditure claimed under cost of operations pertaining to the said M/s.Coastal Projects Pvt. Ltd., was upheld.

8. Aggrieved by the order passed by the CIT(A), the assessee preferred an appeal before the Tribunal, which, by the impugned order allowed the appeal with the following observations :

> *"A perusal of the assessment order as also the order of the learned CIT(A) shows that the allegation is that the assessee has sub-contracted the work taken from M/s.Marg Ltd., to M/s.Coastal Projects Pvt. Ltd., and the area of the contract work sub-contracted was higher than the area which has been taken on contract by the assessee from M/s.Marg Ltd. A perusal of the work order dated 02.2.2010 tallies with that of the assessment order but a*

> *copy of the invoice raised by M/s.Coastal Projects Pvt. Ltd., clearly shows that the area to be approximately 9 lakhs sq. mtrs. which is less than the area 10,20,408 sq. mtrs. contracted by the assessee. This being so, it cannot be said that the sub-contract given by the assessee to M/s.Coastal Projects Pvt. Ltd., is not genuine or that it is not proved. A perusal of the sub-contract as also the invoice clearly shows that the area is an estimated quantity only. This being so, we find no reason to disallow the expenditure nor is there any evidence to show that the transaction entered into between the assessee and M/s.Coastal Projects Pvt. Ltd., was not genuine. In these circumstances, the addition as made by the AO in respect of the sub-contracting of the contract work to M/s.Coastal Projects Pvt. Ltd., representing the expenses claimed towards cost of operation stands deleted."*

9. The Tribunal appears to have examined certain documents, which seemed to have been produced by the assessee for the first time before the Tribunal and the Tribunal proceeded to hold that a perusal of the sub-contract as also the invoice showed that the area was an estimated quantity only and therefore, the Tribunal found no reason to

interfere disallow the expenditure. In our considered view, the Tribunal, while testing the correctness of the order passed by the CIT(A), is required to examine as to whether there is any error of fact or law committed by the CIT(A). In the assessee's case, both before the Tribunal and the CIT(A), the assessee could not reconcile the difference and for the first time, the assessee attempted to do so before the Tribunal.

10. If such is the fact situation, two options would be available to the Tribunal, the first being, in our opinion, the most effective, is to call for a remand report from the Assessing Officer based on the documents presented by the assessee before the Tribunal for the first time and the second option is to remand the matter to the Assessing Officer for a fresh consideration. The Tribunal did not exercise any one of the options, but proceeded to take note of certain documents placed before the Tribunal for the first time and granted relief to the assessee. We do not agree with the procedure adopted by the Tribunal and without examining the fact situation, the Tribunal ought not to have granted relief especially when the assessee could not reconcile the difference before either the Assessing Officer or the CIT(A). Hence, we are of the considered view that the Tribunal ought to have remanded

the matter to the Assessing Officer for a fresh consideration and ought not to have allowed the appeal.

11. For all the above reasons, the appeal filed by the Revenue is allowed, the impugned order is set aside and the matter is remanded to the Assessing Officer for a fresh consideration. It is made clear that this Court has not rendered any finding on the merits of the matter and it will be well open to the assessee to place all the documents available with them before the Assessing Officer to substantiate their claim. No costs.

16.2.2021

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

RS

T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

RS

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