

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2010

Coram :

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

and

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

T.C.(A) No.824 of 2010

M/s SRM Systems & Software (P) Ltd

No.2, Veerasamy Street

West Mambalam

Chennai 33. : Appellant

v.

The Assistant Commissioner of Income Tax

Central Circle I (3)

121, Nungambakkam High Road

Chennai 34. : Respondent

Prayer :- Tax Case Appeal filed against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C' dated 31.03.2009 in ITA.No.1221/Mds/2008.

For appellant : Dr.Anitha Sumanth

For respondent : Mr.K.Subramanian, SSC

J U D G M E N T

(Judgment of the Court was delivered by

F.M.IBRAHIM KALIFULLA )

The assessee is the appellant and the appellant seeks to raise the following substantial questions of law:-

"(i) 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 the Commissioner of Income Tax under Section 263 of the Income Tax Act?

(2) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that there was a receipt of Rs.6,87,77,922/- from Valliammai Society and that the Assessing Officer failed to make any enquiry in that regard and that the assumption of jurisdiction by the Commissioner of Income Tax is justified?".

2. The brief facts are that there was a search under Section 132 of the Income Tax Act conducted at the SRM Group and Educational Institutions as well as its Chairman Shri.T.R.Pachamuthu on 12.08.2004 including his residence at Valasaravakkam. During the course of search, documents relating to the assessee were seized which inter-alia revealed the transactions of M/s Valliammai

Society with the appellant/assessee, which were contained in the Compact Discs seized from the premises of Shri.T.R.Pachamuthu. Nevertheless, with reference to a sum of Rs.6,87,77,922/- received by the assessee from M/s Valliammai Society, there was no consideration in the order of assessment. In the said circumstances, invoking the revisional jurisdiction under Section 263 of the Income Tax Act, the Commissioner of Income Tax (Appeals) issued a show cause notice dated 20.09.2007 making it clear that the order of the Assessing Authority was erroneous and was also prejudicial to the interest of the revenue. The appellant/assessee asked for copies of the materials relied upon by the department, which were also supplied. Certain explanations were also offered by the appellant/assessee. It was in those circumstances, the Commissioner of Income Tax (Appeals) passed final orders on 27.03.2008 holding that the Assessing Authority completed the Search Assessment Order under Section 153 C read with Section 153 A dated 29.12.2006, without considering and verifying the contents of the 9 CDs, which was erroneous and prejudicial to the interests of the revenue and consequently directed the Assessing Officer to examine the said issues and redo the same afresh by providing sufficient opportunity of hearing to the assessee under the provisions of the Income Tax Act.

3. On further appeal by the assessee before the Tribunal, the Tribunal by relying upon the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs CIT reported in 243 ITR 83 held that inasmuch as even before the Commissioner of Income Tax (Appeals) there was no explanation offered by the assessee regarding the treatment of certain portions of the expenditure relating to the sum of Rs.6,87,77,922/- received from M/s Valliammai Society and the conclusion of the Commissioner of Income Tax (Appeals) that the Assessing Authority's order was absolutely silent on that aspect was justified. The Tribunal therefore held that the direction of the Commissioner of Income Tax (Appeals) that the Assessing Officer should examine the issue contained in the concerned CDs after giving an opportunity to the appellant cannot be found fault with.

4. Having considered the orders of the Commissioner of Income Tax (Appeals) and that of the Tribunal, we are not inclined to take a different view. As rightly held by the Commissioner of Income Tax (Appeals), when the Assessing Officer completely omitted to deal with the receipt of a sum of Rs.6,87,77,922/- which was revealed from the CDs seized in the course of search held on 12.08.2004, certainly the order of the Assessing Authority was erroneous and consequently there was serious prejudice caused to the interest of the revenue. In such circumstances, when the Commissioner of Income Tax (Appeals) has only directed the Assessing Officer to redo the exercise relating to the receipt of a sum of Rs.6,87,77,922/- from M/s Valliammai Society by giving due opportunity to the appellant cannot be faulted. Since we do not find any lapse or wrong exercise of power by the Commissioner of Income Tax (Appeals), while invoking the jurisdiction under Section 263 of the Income Tax Act, there is no scope to entertain this appeal by interfering with the orders of the lower authorities. Therefore, there is no question of law to be examined much less substantial question of law in this appeal. The appeal fails and the same is dismissed. We make it clear that we have not gone into the merits of the issue and it is for the Assessing Authority to consider the issues on its own merits and in accordance with law. No costs.

To

1.The Assistant Commissioner of Income Tax  
Central Circle I (3)  
121, Nungambakkam High Road  
Chennai 34.

2. Income Tax Appellate Tribunal, Chennai Bench 'C'

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