(2008) 07 MAD CK 0023

In the Madras High Court

Case No : Tax Case Appeals No''s. 1026 and 1027 of 2008 and M.P. No. 1 of 2008 in T.C. No. 1027 of 2008

Commissioner of Income Tax APPELLANT

Vs

Qatalys Software Technologies Ltd. RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Citation : (2009) 308 ITR 249

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue is on appeal against the order of the Tribunal dated January 3, 2008. The relevant assessment year is

2003-04.

2. The material facts culled out from the statement of facts stated in the memorandum of appeals are as follows:

The assessee is engaged in the business of software export. For the assessment year under consideration, the assessee-company has filed its return

of income on November 13, 2003, admitting a total income of Rs. 2,34,810 after claiming deduction u/s 10A in a sum of Rs. 3,09,382. The return

of income was processed u/s 143(1) on December 20, 2003. Thereafter, notice u/s 148 was issued on October 5, 2004. The assessment was

reopened u/s 147 as the Assessing Officer was of the view that income chargeable to tax has escaped assessment as the assessee has included

interest receipt from bank in a sum of Rs. 17,09,661 in the profits of business eligible for deduction u/s 10A of the Act. Subsequently, the

Assessing Officer has issued notice u/s 143(2) and after calling for further details and clarifications, has completed the assessment on December

23, 2005, whereby he has computed the business loss at Rs. 3,46,544 in respect of the unit eligible for deduction u/s 10A and brought to tax the

interest income mentioned above as ""Income from other sources"".

4. The appeal against the order at the instance of the assessee to the Commissioner of Income Tax (Appeals) was not successful, though the point

of reopening of assessment has been taken before him. The assessee carried the matter on further appeal to the Tribunal. The Tribunal has taken

the issue as to whether the Assessing Officer can take action u/s 148 when the time for issuing notice u/s 143(2) has not expired. After hearing the

parties, the Tribunal held in favour of the assessee on the issue of reopening of the assessment when the time for issuing notice u/s 143(2), had not

expired, by following the decision of this court in the case of Commissioner of Income Tax Vs. K.M. Pachayappan, in T.C.A. No. 870 of 2007,

dated July 4, 2007, wherein this court has held that no reassessment proceeding could be initiated so long as the assessment proceedings pending

on the basis of the return already filed are not terminated. The Revenue, aggrieved over that portion of the order, filed the present appeal by

formulating the following questions of law:

1. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that reassessment proceedings are not valid since the

Assessing Officer is barred in initiating the proceedings u/s 148 when the time for issuance of notice u/s 143(2) had not expired?

2. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the appeal by the Revenue is infructuous?

5. We have heard the argument of the learned Counsel for the Revenue, who submitted that the issue has already been decided against the revenue

by the abovecited judgment of the Division Bench of this court.

6. We have also perused the above referred judgment of the Division Bench of this court dated July 4, 2007, wherein it is held as follows (page

268):

Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated u/s 147 of the Act, when there is a pendency of the return before the Assessing Officer.

The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal

so as to warrant interference.

7. Following the said decision, these appeals are dismissed. Consequently, connected miscellaneous petition is also dismissed.

