IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Judgment Reserved On	Judgment Pronounced On
23.03.2021	30.03.2021

T.C.A.No.997 of 2018

M/s.Virtusa Consulting Services Pvt. Ltd.,
[Formerly known as M/s.Polaris Consulting & Services Limited],
No.34, IT Highway,
Navallur, Chennai-603 103.
[Cause title substituted vide order dated 11.11.2020 in C.M.P.No.12385/2020 in T.C.A.No.997/2018] .. Appellant

-vs-

The Deputy Commissioner of Income-tax,
Income Tax, Chennai-600 034. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 18.08.2017 made in I.T.A.No.1218/Mds/2016 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2010-11.

For Appellant : Mr.Kamal Sawhney,
assisted by
Mr.Prashant Meharchandani
: For Mr.N.V.Balaji

For Respondent : Ms.R.Hemalatha,
Senior Standing Counsel

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JUDGMENT

T.S.Sivagnanam, J.

This appeal, filed by the appellant/assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 18.08.2017, passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai (for brevity "the Tribunal") in I.T.A.No.1218/Mds/2016 for the assessment year 2010-11.

2.The appeal is entertained on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the jurisdictional validity of the revisionary proceedings initiated by the respondent given that the original assessment order passed by the

AO is not erroneous as the AO has granted deduction claimed under Section 10A of the Act only after duly verifying the documents submitted during the course of original assessment proceedings?

(ii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in concluding that in the absence of separate books of accounts being maintained for the 10A units, the deduction shall be computed based on the overall average profit margin of the appellant despite the provisions of Section 10A of the Act specifically provides for unit-wise computation of deduction? and

(iii) Whether in the facts and in the circumstances of the case the Tribunal was right in remanding the case back to Assessing Officer for fresh adjudication?"

3.The assessee is a company engaged in the business of software development. For the assessment year under consideration 2010-11, they filed their return of income on 27.09.2010, declaring a taxable income of Rs.52,87,83,933/- under normal provisions, after claiming deduction of Rs.79,13,24,379/- under Section 10A of the Act and book profit of

Rs.1,37,13,42,888/-. The case was selected for scrutiny and notice dated 13.08.2013, was issued under Section 143(2) of the Act. A reference was made to the Transfer Pricing Officer (TPO) under Section 92CA of the Act for determining the Arm's Length Price (ALP) of the international transactions entered into by the assessee with its Associated Enterprises (AEs).

4.The assessee would state that during the hearing, they had submitted all details as sought for by the Assessing Officer, vide submissions dated 26.02.2014. After verification of the documents placed before the Assessing Officer, the deduction claimed under Section 10A of the Act was recomputed after excluding the expenditure incurred in foreign currency and unrealised export proceeds from the export turnover of the assessee. The Assessing Officer came to the conclusion that the deduction allowed under Section 10A of the Act amounting to Rs.76,83,44,038/- was wrongly computed by considering the export turnover and the total turnover of the entire business of the assessee instead of considering the data pertaining only to 10A units. Accordingly, by invoking power under

Section 154 of the Act, a rectification order dated 10.10.2014, was passed recomputing the deduction allowed under Section 10A of the Act to Rs.69,86,22,227/-. While so, the Principal Commissioner of Income Tax, Chennai-5 (PCIT), issued notice dated 11.01.2016, calling upon the assessee to show cause as to why the assessment order dated 28.03.2014, as rectified, should not be set aside under Section 263 of the Act. The PCIT stated that the Assessing Officer had committed the following errors:-

"The assessee is a software exporter having 10A units and Non-10A units. The turnover and profit ratio of 10A units and Non-10A units are as given below:-

Description	10A Units	Non 10A Units	Total
Turnover	351,23,74,845	792,23,94,457	1143,47,69,301
Net Profit	86,42,54,985	42,9358,778	129,36,13,763
Turnover Ratio	0.31	0.69	1.00
Net Profit Ratio	0.25	0.05	0.11

From the above table, it can be seen is noticed that the profit percentage in 10A units is 24.6% as against 5.42% in non-10A units and the sales turnover of (>90%) is with its Associate Enterprises only. Further, the assessee company has not maintained separate books of account for 10A units. In the absence of separate books of accounts for 10A units, it is evident that the assessee has shown lesser profit

relating to non 10A units thereby reducing the taxable profit by booking excessive expenditure. The average profit of 11.31% has to be uniformly applied and the deduction allowed u/s 10A will have to be reworked accordingly, thereby reducing the deduction under Section 10A, than what is claimed in the return of income.

The Assessing Officer has failed to consider this aspect while finalizing the Assessment Order. As such, the Order passed by the Assessing Officer dated 28.03.2014 u/s.143(3) is erroneous and prejudicial to the interest of revenue. Therefore, please show cause as to why the aforesaid order passed u/s.143(3) for the AY 2010-11 should not be set aside u/s.263 of the Income tax Act to bring to tax the aforesaid income which has been left out to be assessed by the Assessing Officer in the impugned order."

5.The assessee submitted their reply dated 16.02.2016, the Authorised Representative of the assessee was heard in person by the PCIT and an order under Section 263 of the Act dated 24.02.2016, was passed setting aside the assessment order dated 28.03.2014, for the limited purpose of

withdrawing the excess deduction allowed to the assessee to the tune of Rs.37,10,94,443/- under Section 10A of the Act. Aggrieved by such order, the assessee preferred appeal before the Tribunal. Firstly, the assessee challenged the jurisdiction of the PCIT to invoke Section 263 of the Act on the ground that the original assessment order passed under Section 143(3) of the Act is not erroneous, since the Assessing Officer has granted deduction under Section 10A of the Act, only after duly verifying the documents submitted by the assessee during the course of original assessment proceedings. Therefore, the exercise of revisional power under Section 263 is due to change of opinion.

6.The Tribunal rejected the case of the assessee on the ground that the Assessing Officer has not made any enquiry with regard to the maintenance of books of accounts and reducing of profit in respect of non-10A units, which shows that the order of the Assessing Officer is erroneous and also prejudicial to the interest of Revenue. Further, the Tribunal observed that when the assessee submits that no separate books were maintained for eligible 10 units and non-10A units, the PCIT was right in holding that

average profit has to be applied for the purpose of allowing deduction under Section 10A of the Act. Challenging the said order, the assessee is before us by way of this appeal.

7.Broadly two issues fall for consideration in this appeal; the first of which being, whether the ingredients for invoking the power under Section 263 of the Act were available and invoking such power was proper and valid; the second issue is, whether it is necessary to maintain separate books of accounts for 10A units and if not maintained, whether the deduction should be computed based on over all average profit margin.

8.We have elaborately heard Mr.Kamal Sawhney, learned counsel assisted by Mr.Prashant Meharchandani, learned counsel for Mr.N.V.Balaji, learned counsel for the appellant/assessee; and Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the respondent/Revenue.

9.We had earlier referred to the notice issued by the PCIT dated 11.01.2016, proposing to set aside the assessment order by invoking his

power under Section 263 of the Act. In the notice, the PCIT pointed out certain errors. It was stated that the profit percentage of 10A units is 24.6% as against 5.42% in non-10A units and the sales turnover of (>90%) is with its AEs only. Further, the assessee-company has not maintained separate books of accounts for 10A units and in the absence of separate books of accounts for the 10A units, it is evident that the assessee had shown lesser profit relating to non-10A units thereby, reducing the taxable profit by booking excessive expenditure. That it was stated that the average profit of 11.31% has been uniformly applied and the deduction allowed under Section 10A will have to be reworked accordingly, thereby, reducing the deduction under Section 10A Act, than what was claimed in the return of income. Therefore, in the opinion of the PCIT, the assessment order under Section 143(3) of the Act, is erroneous and prejudicial to the interest of Revenue. Thus, it could be seen that the PCIT was of the opinion that the assessment order is erroneous and prejudicial to the interest of Revenue on the ground that the profit margin of 10A units is very high, when compared to the profit margin of non-10A units. Further, the assessee has not maintained separate books of accounts for 10A units and therefore, the

average profit has to be ascertained and uniformly applied and therefore, the deduction allowed under Section 10A of the Act has to be reworked.

10.It is settled legal position that for invoking the power under Section 263 of the Act, the twin conditions are to be cumulatively satisfied, viz., the assessment order should be erroneous and the assessment order should be prejudicial to the interest of Revenue. If any one of these two limbs is absent, the power conferred on the PCIT under Section 263 of the Act, cannot be invoked ***(CIT vs. Max India Ltd., [(2007) 295 ITR 282 (SC)];*** and ***Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)]).***

11.The PCIT finds fault with the Assessing Officer in not considering the aspect regarding the profit percentage of 10A units and non-10A units. If there is material to show that the Assessing Officer did apply his mind to the said issue and then arrived at the permissible deduction under Section 10A of the Act, the order passed by the Assessing Officer cannot be branded as being “erroneous” and if the power under Section 263 of the Act could not have been invoked solely for the reason that the assessment order is prejudicial to the interest of Revenue.

12.The assessee, in their reply dated 16.02.2016, has set out certain facts, which have not been disputed by the Revenue before the Tribunal. Therefore, we take note of the said submissions, which are on the following lines:-

12.1.The Assessing Officer had issued notice to the assessee and called for details. The assessee by letter dated 28.03.2014, had submitted the unit-wise profit and loss account, explanation on claim of deduction under Section 10A, Chartered Accountant's certificate in Form 56F on the deduction under Section 10A for each unit and breakup of expenditure incurred in foreign currency in 10A units.

12.2.On a perusal of the assessment order, we find there is discussion with regard to the details called for from the assessee, the reply submitted by them, as seen from paragraph 6 of the assessment order dated 28.03.2014. Therefore, we can safely hold that the order has been passed by the Assessing Officer with application of mind and it is a speaking order and the Assessing Officer did not accept the deduction as computed by the

assessee, but reworked and held that Rs.31,11,63,096/- has to be reduced from the export turnover for computation of deduction under Section 10B of the Act. Further, a sum of Rs.6,75,79,529/- was reduced from the export turnover in computation of deduction under section 10A of the Act. If this is the undisputed factual situation, as has been reflected in the assessment order, we are of the clear view that the Assessing Officer had applied his mind to arrive at the deduction as made by him in his order. Therefore, the PCIT committed an error in holding that the assessment order is erroneous.

12.3.Admittedly, the details called for from the assessee have been submitted before the Assessing Officer, as we find that the Assessing Officer has not recorded that the details were not submitted or not submitted in full form. In the absence of any such finding, it has to be held that the Assessing Officer was satisfied with regard to the details, which were placed by the assessee pursuant to notice dated 29.01.2014. Therefore, the Assessing Officer has completed the assessment based on the materials and documents placed before him and there is nothing to suggest that the conclusion arrived at by him was unsustainable in law, justifying invoking

the revisional jurisdiction under Section 263 of the Act. The Chartered Accountant's certificate in Form No.56 was called for from the assessee, which has been submitted wherein, the Chartered Accountant has certified the computation of deduction under Section 10A of the Act. After perusal of this certificate, the Assessing Officer proceeds to take an independent decision in the matter. Therefore, the order cannot be stated to be without application of mind and consequently, cannot be held to be erroneous. The PCIT further states that separate books of accounts for expenses incurred in the different units were not maintained by the assessee.

13.Mr.Kamal Shawney's submission, on this issue, is two fold. Firstly, it is not mandatory to maintain separate books of accounts and that the assessee is supported by three circulars issued by the Central Board of Direct Taxes (CBDT). The second limb of the submission is that the assessee did maintain separate books of accounts and all relevant details were placed before the Assessing Officer. In the paper book, Volume-2, the assessee has placed before us the profit and loss account for the period ending 31.03.2010, for both non-10 units as well as 10A units, from which we find there are five non-10A units, which have been abbreviated as

CHE1, MUM1, NAV1, NSTP and SEZ1; and six 10A units as CHE5, GRGI, HYDI, MUM2, MUM3 and MUM4. The profit and loss accounts, for the period ending 31.03.2010, for the units situated outside the country, have also been furnished.

14.Further, from the assessment order, we see that the Assessing Officer made a reference to the TPO under Section 92CA(1) of the Act and the TPO after considering the documents placed before him, stated that the transactions of the assessee are found to be at arm's length. Further, the assessee had stated that the statement in the notice that all units provide services of >90% to AEs is incorrect and not supported with facts and that the assessee rendered services to both AE and non AE units from its units. Further, we find that the Assessing Officer has reworked the deduction under Section 10A by reducing the expenditure incurred in foreign currency under several heads and therefore, it goes without saying that the Assessing Officer has allowed deduction under Section 10A of the Act, after considering the documents produced by the assessee and the various expenses pertaining to the 10A units and the turnover of the 10A units.

15.In the reply dated 26.02.2014, the assessee has also made submissions on the merits by stating that they have not booked excessive profits in 10A units and not claimed excessive deduction under Section 10A of the Act. The assessee explained the transaction with its AEs, regarding maintenance of separate books of accounts and the allegation of booking excessive expenditure in non-10A units. This has been brushed aside by the PCIT and not considered.

16.With regard to the maintenance of separate books of accounts, as submitted by the learned counsel, the assessee has stated that it is not mandatory to maintain separate books of account for expenses incurred in the different units for the purpose of claiming deduction under Section 10A of the Act. Without prejudice to the said submission, the assessee stated that they have maintained separate statement of profit and loss for each of its units and the same has been submitted to the Assessing Officer during the course of assessment proceedings. Further, the assessee has also furnished report of the Chartered Account in Form 56F certifying the computation of deduction under Section 10A of the Act.

17.With regard to the allegation of booking excessive expenditure in non-10A units, the assessee pointed out that they have maintained separate trial balance and statement of profit and loss for each of the units in support of their claim. Further, the assessee pointed out that non-10A units, which were considered by the PCIT, include the US branch of the assessee, where the nature of business is such that profit percentage was lower and in case, the profits and turnover of the US branch are not considered, the average net profit ratio of the assessee as a whole would be 13.96% as against 11.31% as mentioned in the notice dated 11.01.2016. Therefore, the assessee stated that merely because the profit percentage of 10A units is higher than the profit percentage of non-10A units, it cannot be said that excessive expenditure have been booked in non-10A units.

18.With regard to the reworking of deduction under Section 10A by applying average profits to the turnover 10A units, the assessee pointed out that there is no provision under the Act, which requires deduction should be made based on average profit of the assessee. After furnishing factual

details, the assessee submitted that the assessment order passed under Section 143(3) is neither erroneous nor prejudicial to the interest of Revenue and initiation of proceedings under Section 263 of the Act is without jurisdiction. Without prejudice to the said contention, the assessee submitted that the reworking of deduction under Section 10A is not in accordance with law due to the following reasons:-

(i) The company has transactions with Associated Enterprises as well as non-Associated Enterprises and the transactions with Associated Enterprises have been found to be at arm's length by the TPO;

(ii) The company has maintained separate statement of Profit & Loss for each of its units;

(iii) Merely because the profit percentage of 10A units is higher than the profit percentage of non-10A units, it cannot be said that excessive expenditure have been booked in non-10A units; and

(iv) There is no provision under the Act under which the deduction under Section 10A can be re-worked based on the average profits of the company.

19.The PCIT rejected the contentions raised by the assessee and by order dated 24.02.2016, set aside the assessment order, insofar as it relates to the deduction allowed to the assessee to the tune of Rs.37,10,94,443/-under Section 10A of the Act and directed the Assessing Officer to modify the assessment.

20.On a perusal of the order passed by the PCIT, we find there is no discussion and finding with regard to the exercise of jurisdiction under Section 263, which according to the assessee was without jurisdiction. Secondly, the issue whether it is mandatory for the assessee to maintain separate books of accounts was also not decided by the PCIT. If according to the PCIT, it is mandatory to maintain separate books of accounts, the alternate submission made by the assessee that they have maintained separate profit and loss account and the same was submitted to the Assessing Officer, who has considered the same and then completed the assessment, was not dealt with or discussed. To be noted that the Assessing Officer did not reject the profit and loss account submitted by the assessee,

but undertook an exercise to rework the deduction, which was not challenged by the assessee.

21.The PCIT would state that the Assessing Officer has not made any enquiry. This finding is absolutely vague, as we find from the assessment order under Section 143(3) of the Act, the Assessing Officer did conduct an enquiry, called for details, the details were produced and thereafter, the assessment was completed. Therefore, the finding of the PCIT in that regard is erroneous, consequently, assumption of jurisdiction under Section 263 of the Act was not sustainable.

22.The Tribunal while testing the correctness of the order passed by the PCIT has also not dealt with the issues, which were specifically pleaded by the assessee. Therefore, we are to necessarily hold that the order passed by the Tribunal is also erroneous.

23.The CBDT by Circular No.1/2013, dated 17.01.2013, issued clarification on various issues, which were highlighted by the software

industry and one such issue was, whether it is necessary to maintain separate books of account for eligible units claiming tax benefit under Sections 10A and 10B of the Act. The clarification is to the following effect:-

> *"(v) Whether it is necessary to maintain separate books of account for an assessee in respect of its eligible units claiming tax benefits under Sections 10A and 10B.*
>
> *Since there is no requirement in law to maintain separate books of account, the same cannot be insisted upon. However, since the deductions under these sections are available only to the eligible units, the Assessing Officer may call for such details or information pertaining to different units to verify the claim and quantum of exemption, if so required."*

24.In terms of the above clarification, there is no requirement to maintain separate books of account.

25.By Instruction No.17/2013 dated 19.11.2013, the Field Officers of the Department were advised to follow Circular No.1/2013 dated

17.01.2013, in letter and spirit. By Instruction No.3/2014, dated 14.03.2014, the Department Representatives and the Standing Counsel of the Department were directed to be informed about Circular No.1/2013, who appear for the Department before the Tribunal and the Court.

26.The above circulars and instruction are binding on the Department and therefore, the conclusion of the PCIT that it is necessary to maintain separate books of account is not sustainable. This aspect was considered by a Division Bench of this Court in ***Cairn India Ltd., vs. Director of Income-tax (IT), Chennai [(2017) 87 taxmann.com 310 (Madras)]*** holding that Section 80IB does not mandate that for claiming deduction, separate books of accounts should be maintained.

27.In ***Kumar Rajaram vs. Income-tax Officer (International Taxation 2(1)), Chennai [(2019) 110 taxmann.com 109 (Madras)],*** the Court considered the scope of Section 263 of the Act and after noting the decision in ***CIT vs. Gabriel India Ltd. [(1993) 71 Taxman 585 (Bombay)]*** and the decision of the High Court of Delhi in ***CIT vs. Sunbeam Auto Ltd.***

[(2011) 332 ITR 167 (Del)], held that the power exercised under Section 263 of the Act was on account of mere change of opinion. The operative portion of the judgment reads as follows:-

> *"5. ..... The Commissioner had issued show cause notice dated 12.03.2015 under Section 263 of the Act. In the show cause notice, the Commissioner states that the figures mentioned by the assessee were culled out from the records, thus there was no other independent material which formed the basis of the show cause notice. ..... The CIT while issuing the show cause notice did not rely upon any independent material nor on any interpretation of law but on perusal of the records was of the view that the expenditure cannot be allowed as deduction. Along with the filled in questionnaire, the assessee had filed the copy of the last will and testament of his father, sale deed of the Bangalore property and the legal opinion given by the learned counsel for the assessee. After perusal of the same, the Assessing Officer has taken a stand and passed the order. Therefore, it cannot be stated that the Assessing Officer did not apply his mind to the issue, after all the Assessing Officer cannot be expected to write a judgment. Admittedly there was an*

inquiry conducted by the Assessing Officer and it is not the case of the CIT that there was a lack of inquiry or inadequate inquiry.

6.In the case of Commissioner of Income Tax vs. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)], it was held that suo motu revision under Section 263 of the Act can be exercised only if on examination of the records of any proceedings under the Act, the Commissioner considers that an order passed by the Income Tax Officer is erroneous in so far as it is prejudicial to the interest of revenue. It was further held that this power is not arbitrary or uncharted power, it can be exercised only on fulfilment of the requirements laid down in Sub-section (1), that an order is erroneous in so far as it is prejudicial to the interests of the revenue, must be based on materials on the record of the proceedings called for by the Commissioner and if there are no materials on record, the basis on which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings will be illegal and without jurisdiction. It was further held that the Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries into

the matters or orders which are already concluded as such an action will be against the well accepted policy of law that there must be a point of finality in all illegal proceedings, stale issues should not be reactivated beyond a particular stage. Section 263 of the Act does not visualize a case of substitution of the judgment of the Commissioner for that of the Income Tax Officer, who passed the order unless the decision is held to be erroneous. Merely because the Commissioner is not fully satisfied with the conclusion of the Income Tax Officer, the order cannot be turned to be erroneous. On a reading of the order dated 01.07.2015/22.07.2015 passed under Section 263 of the Act one can easily form an opinion that the order is based upon the interpretation which the CIT has given to the terms and conditions of the last will and testament of the assessee's father dated 30.10.2008. Thus, it is evident that the CIT has made a roving enquiry and substituted his view to that of the view taken by the Assessing Officer who had done so after conducting an enquiry into the matter and after calling for all documents from the assessee, one of which is the last will and testament executed by the assessee's father. Therefore, we are of the clear view that this is not a case where the

Commissioner could have invoked the power under Section 263 of the Act. For all the above reasons, the Substantial Questions of Law 1 and 4 are answered in favour of the assessee.

13.The Substantial Question of law No.3 is with regard to the expenditure claimed by the assessee. The assessee had produced documents before the Assessing Officer who had scrutinized the same and accepted the genuinity of the claim and granted the benefit. The CIT disallowed the expenses on the ground that the Assessing Officer did not make an in depth inquiry. A similar finding was tested for its correctness by the High Court of Delhi in the case of Commissioner of Income vs. Sunbeam Auto Ltd. [(2011) 332 ITR 167 (Delhi)] and it was held that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was an inquiry, even adequate that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the Act merely because he has a different opinion in the matter and it is only in cases of lack of inquiry that such a course of action would be open. As mentioned by us in the preceding paragraphs, the assessee has responded to the notice issued under Section 142 of the

Act and produced documents and records including their statement of total income wherein they had given the entire details including the receipts issued by the respective persons to whom payments were effected, all of which were through banking channels. Therefore, in our considered view the finding rendered by the CIT was perverse which ought not to have been affirmed by the Tribunal more so for the reason that there was no evidence with regard to the expenses like professional fee, etc. The Tribunal failed to note that the assessee had produced the copies of the receipts signed by the respective party before the Assessing Officer who was satisfied with the same and in the absence of any fraud being alleged with regard to the authenticity of those documents, the CIT could not have revised the assessment by invoking Section 263 of the Act. For the above reasons, the Substantial Question of law No.3 is answered in favour of the assessee."

28.Ms.R.Hemalatha, learned Senior Standing Counsel sought to sustain the order of the PCIT as affirmed by the Tribunal by reiterating the conclusion arrived at by the PCIT that enquiry was not conducted by the Assessing Officer.

29.In the preceding paragraphs, we have dealt with the said issue and we have recorded our satisfaction that the Assessing Officer did conduct an enquiry, called for documents from the assessee, which were submitted by the assessee and after considering the documents and records and discussing the case with the assessee, the assessment was completed. The reference to the TPO was also made, who had concluded that there is no adjustment required to the ALP.

30.In support of her contention, reliance was placed on the decision in ***CIT vs. Nalwa Investments Ltd. [(2011) 11 taxmann.com 98 (Del)].*** We find the said decision would not assist the case of the Revenue, since in the said case, the Assessing Officer failed to apply his mind as to whether dividend income could be given character of business income for the purpose of set off and therefore, the question of there being plausible view did not arise and therefore, the order of the Tribunal was quashed. In the case on hand, we have found that the Assessing Officer did apply his mind and then come to the conclusion.

31.Reliance was placed on the decision in the case of ***Nagal Garment Industries (P.) Ltd. vs. CIT [(2020) 113 taxmann.com 4 (MP)].*** This decision is also distinguishable on facts, as in paragraph 9 of the judgment, the Assessing Officer after issuing a questionnaire to the assessee, on considering the reply filed by the assessee and after recording that the reply was not satisfactory, did not proceed further in the matter. Therefore, the decision cannot be applied to the facts before us.

32.Reliance was also placed on the decision in ***CIT vs. Modi Brother [(2007) 164 Taxman 331 (MP)].*** The question of law, which was framed for consideration, was whether the Tribunal was justified in considering the documents, which were not on record before the Assessing Officer while passing the order impugned in the said appeal. The Court had remanded the matter without expressing any opinion on the question framed and therefore, the decision cannot be relied on as a precedent.

33.In the light of the above discussions, we are of the clear view that the Tribunal committed an error in not interfering with the order passed by the PCIT.

34.In the result, the tax case appeal is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

(T.S.S., J.) (R.N.M., J.)
30.03.2021

Index: Yes
Speaking Order : Yes

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To

1.The Deputy Commissioner of Income-tax,
Income Tax, Chennai-600 034.

2.The Income Tax Appellate Tribunal 'D' Bench, Chennai.

T.S.Sivagnanam, J.
and
R.N.Manjula, J.

(abr)

Pre-delivery Judgment made in
T.C.A.No.997 of 2018

30.03.2021