

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case (Appeal) No.1062 of 2014

Commissioner of Income Tax
Chennai

...Appellant

versus

M/s.Cauvery Stone Impex Pvt. Ltd.,
8, 2nd Street, Ganapathy Colony,
Chennai - 600 086.

...Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 20.06.2014 made in I..T.A..No.1210/Mds/2013 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench for the assessment year 2009-2010.

against the order of the Commissioner of Income Tax (Appeal) IX, Chennai - 34, dated 28.02.2013 in ITA No. 174/11-12, and arising out of the assessment order of Assistant Commissioner of Income Tax, Company Circle 1(3), Chennai - 34, dated 16.11.2011 in GIR / PAN No. AACCC3310J.

For appellant

: Mr.T.Ravikumar

Standing Counsel for Income Tax

J U D G M E N T
(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the disallowance made under Section 10B of the Income Tax Act?

2. Whether in the facts and circumstances of the case, the Tribunal was justified in drawing the conclusion that difference in sale price could be possible by merely relying on the statement of the assessee and failing to appreciate material evidence relied on by the Assessing Officer, as to the inflation of profit for 10B deduction?

3. Whether in the facts and circumstances of the case, the Tribunal was right in not appreciating the fact that the Assessing Officer has fairly drawn his conclusion that there is shifting of profits to an eligible undertaking based on the material evidence in the form of tax invoices, showing under billing by related party to the assessee?

4. Is not the finding of the Tribunal that the Assessing Officer had acted under an apprehension of shifting of profits wrong and incorrect, when the Assessing Officer had made a very detailed analysis of the sale prices of the related party's sale to the assessee and the related party's sale to third parties and proved under billing by the related party to the assessee for the purpose of inflating the profits of the unit eligible for deduction under Section 10B?"

2. The brief facts of the case are as follows:

The assessee is a company engaged in the manufacture and export of granite monuments. The assessee filed its return of income for the assessment year 2009-10 admitting a taxable income at Rs.25,27,255/- after claiming deduction under Section 10B of the Income Tax Act. It is seen that the assessee had purchased Kashmiri White granite blocks from M/s.Coromandel Agencies, M/s.Gem Granites and M/s.Imperial Granites Pvt. Ltd. While completing the assessment, the Assessing Officer observed that the sale value of the granite blocks by these three companies to the assessee at the rate of Rs.25,000/- per CBM is lesser than the value of sale by the three companies to the unrelated parties at Rs.30,000/- per CBM. For better clarity, we extract the comparative chart as found in the assessment order below:

Tax invoice No. & Date	Description of the goods	Quantity in CBM	Rate per CBM	Amount + Tax
CA/CST/20/08-09 dated 28.09.2008	Dimensional Granite Blocks	9.2070	30,000	2,81,734
CA/CST/21/08-09 dated 06.11.2008	Dimensional Granite Blocks	8.2258	30,000	2,51,709
CA/CST/23/08-09 dated 02.01.2009	Dimensional Granite Blocks	17.6740	30,000	5,40,824
				10,74,267

The abstract of transactions involved between these entities in comparison with third parties is tabulated and provided below:

Product	Amount	Sold to CSIPL	Sold to others
Slabs	39,470	723	
Granite Blocks	82,578	10,000	30,000
Kashmir white	2,50,00,000	25,000	
Total	2,51,22,048		

3. The reasoning given by the Assessing Officer is that the dimensions of the items sold to the related party was larger as compared to that of the third parties and therefore, there could not be any difficulty in fixing the rate on higher plank in respect of others. He further held that the rates of the granite blocks sold to the assessee should be higher because of the larger dimension. Hence, the Assessing Officer completed the assessment and reduced a sum of Rs.50.00 lakhs from business profits of the assessee and computed the deduction allowable under Section 10B of the Income Tax Act on the balance profits on the ground that the profits to the extent of Rs.50.00 lakhs has been shifted from M/s.Coromandel Agencies, which is a related party to the assessee. The Assessing Officer also disallowed sales commission under Section 40(a)(i) of the Income Tax Act paid to overseas agents on the ground that the assessee had not deducted TDS on such overseas commission.

4. The Commissioner of Income Tax (Appeals), on appeal at the instance of the assessee, deleted the disallowance made under Section 40(a)(i) on the commission paid to overseas agents, but upheld the reduction of profits to the extent of Rs.50.00 lakhs while computing deduction allowable under Section 10B of the Income Tax Act.

5. As against the said order of the Commissioner of Income Tax (Appeals), both the Revenue as well as the assessee went on appeal before the Income Tax Appellate Tribunal.

6. The Tribunal, after hearing both sides, allowed the appeal filed by the assessee and dismissed the appeal filed by the Revenue holding that it was only an apprehension of the Assessing Officer that the assessee had shifted profits for the purpose of claiming deduction under Section 10B of the Act and the analysis made by the Assessing Officer was not a conclusive proof to decline deduction under Section 10B of the Act. The Tribunal also upheld the order of the Commissioner of Income Tax (Appeals) with regard to the deletion of disallowance made under Section 40(a)(i) of the Income Tax Act.

7. Aggrieved by the said order of the Tribunal, the Revenue is before this Court raising the above-mentioned substantial questions of law.

8. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed on record.

9. It is seen from the order of the Tribunal that the Assessing Officer had not made any thorough investigation in this matter and had not adopted a fair comparison at all. We find that the investigation done by the Assessing Officer is awry. Had the Officer, who passed the assessment order under Section 143(3) of the Income Tax Act, took a little more effort, the case of the Department would have been more foolproof and it will not suffer the fate before the Tribunal, against which the Department is on appeal.

10. 'CBM' means Cubic Meter. 'Dimension', as per the Concise Oxford Dictionary, means 'a measurable extent, such as length, breadth or height'. It is relevant to note that nowhere in the assessment order, which is supposed to be a detailed order based on enquiry and investigation, we find that there is any reference to the dimension of the granite block in the case of the assessee and in the case of the third parties. It is not known that on what premise and

presumption, the Assessing Officer could come to the conclusion that the dimension in the case of the assessee is larger than that of other parties. The Assessing Officer could not confuse the dimension with CBM. There is nothing in the assessment order to show that the dimensional granite blocks is of a particular size, so that it should be said as comparable for all purposes. This assumes importance. It is an admitted case of the assessee herein that the assessee is engaged in the manufacture and export of granite monuments. The business of the other parties is not known.

11. The Tribunal had accepted the plea of the assessee that in granite dimensional blocks trade, price may vary depending upon size of the block and uniformity in colour, defects etc., as granite is a natural product and if there is any mole, crack or difference in colour, the same could not be exported and hence there are lot of wastages. The Tribunal while allowing the appeal of the assessee held that the sale of dimensional granite blocks to the assessee by the three companies was 131.37 CBM, whereas the sale of dimensional granite blocks by the three companies to the third parties at 8 to 17 CBM. Hence, the huge volume purchased by the assessee could have tilted the sale price in favour of the assessee. The Tribunal was of the view that based on the conjectures and surmises, the Assessing Officer made comparison of the sale price and reduced the profit while computing deduction under Section 10B of the Income Tax Act.

12. We find that on fact the Tribunal had clearly come to the right conclusion that there is no reason to accept the findings of the Assessing Officer, which is bereft of details and based on incomplete investigation.

13. Being pure question of fact, we find no question of law much less any substantial question of law arises for consideration in this appeal. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Madras 'B' Bench.

2. The Commissioner of Income Tax (Appeals) - IX,
Chennai - 34.

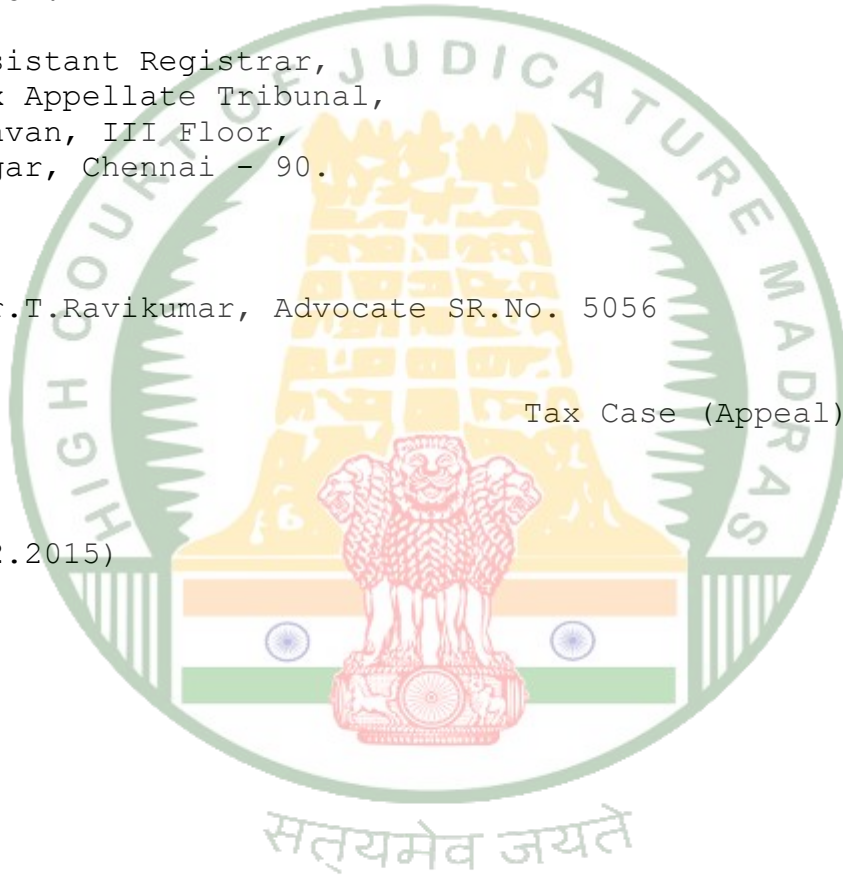
3. The Assistant Commissioner of Income-tax,
Company Circle-I(3),
Chennai - 34.

4. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

1 CC to Mr.T.Ravikumar, Advocate SR.No. 5056

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TS (CO)
PSI (23.02.2015)



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