IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) Nos.689 and 690 of 2015
and
M.P.No.1 of 2015

The Commissioner of Income Tax
Chennai ...Appellant in both TCAs.

-vs-

M/s.Chennai Footwear Pvt.Ltd.,
(now merged with M/s.Farida Shoes Pvt.Ltd.)
No.151/4, Mount Poonamallee Road
Ramapuram, Chennai 600 089. ...Respondent in both TCAs.

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 18.02.2015 passed in ITA Nos.1440/Mds/2014 and ITA No.1841/Mds/2014, against the order of the Commissioner of Income Tax (Appeals) I, Chennai - 600 034, ITA No. 725/09-10/A-1, dated 18.03.2014 against the Assessment order dated 29.12.2009 in GIR/PAN AABCC5797Q by the Assistant Commissioner of Income Tax Company Circle I (3), Chennai - 34.

For Appellant : Mrs.Hema Muralikrishnan
in both TCAs. Junior Standing Counsel for
Income Tax

COMMON JUDGMENT
(The Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

These two appeals are by the Revenue, raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal was right in deleting the disallowance made on account of business promotion expenses when most of the items of expenses were personal expenditure spent by the Director and therefore not allowable under Section 37 (1) of the Income Tax Act?

2. Is not the finding of the Tribunal bad by deleting the entire additional Rs.50 lakhs when the raw material supplied to sister concern were at a lower rate when compared to others thus diverting its profit to its sister concern?

3. Whether the finding of the Tribunal that the disallowance made under Section 40A(2)(b) is not attracted especially when the assessee had supplied its entire product to its sister concerns at exorbitant price thus bring down the profit of the assessee company?"

2. Heard Mrs.Hema Muralikrishnan, learned Standing Counsel for the appellant.

3. The assessee filed its return of income electronically on 25.10.2007 for the assessment year 2007-2008. The return of income was selected for scrutiny through CASS and a notice under Section 143 (2) was issued.

4. Subsequently, a notice under Section 142(1) was issued on 05.11.2009 calling for details in proof of the claim of expenditure made under depreciation. The assessee appeared and produced the details along with books of accounts. Since the Department was not satisfied, yet another notice was issued and a substantial portion of the records were thereafter produced.

5. The Income Tax Officer invoked the provisions of Section 40A(2)(b) on the ground that on a massive turnover of more than Rs.103 crores, the assessee had shown a net profit of just Rs.13.85 lakhs, which is almost 0.13%. Only on this ground, the Assessing Officer disallowed the expenditure incurred.

6. The assessee filed an appeal to the Commissioner of Income Tax (Appeals). By an order dated 18.03.2014, the Commissioner (Appeals) partly allowed the appeal and directed the Assessing Officer to restrict the disallowance only to Rs.25 lakhs. As against

the disallowed portion, the assessee filed a further appeal. As against the allowed portion, the Revenue filed further appeal. Both the appeals were disposed of by a common order dated 18.02.2015 by the Income Tax Appellate Tribunal. By the said order, the Tribunal allowed the appeal of the assessee and dismissed the appeal of the Revenue. Hence the Revenue is on appeal.

7. On the first question of law, which relates to business promotion expenses, the Tribunal has recorded a factual finding that most of the items were found from the books of accounts not to be personal expenditure, but to be business promotion expenses. Therefore, the first question of law raised by the Revenue does not arise for consideration in the light of the factual finding that the expenses were found to be business promotion expenses.

8. The second and third questions of law relate to the disallowance under Section 40A(2)(b). Under Section 40A(2)(a), where the Assessing Officer is of the opinion that an expenditure in respect of which payment has been made is excessive or unreasonable having regard to the fair market value of the goods, he may order that so much of the expenditure, which is excessive or unreasonable shall not be allowed as a deduction. But, in this case, the Tribunal found that the only reason as to why the Assessing Officer came to a conclusion about the excessive or unreasonable nature of the expenditure was on the basis that the net profit amounted to only 0.13% of a massive turnover of about Rs.103 crores. On such a premise, the conclusion that the expenses incurred were excessive or unreasonable could not have been arrived at. This is why, the Tribunal pointed out there are no materials to come to the conclusion that any particular item of expenditure was expensive or unreasonable.

9. The appeals do not merit consideration as the question of fact decided by the Tribunal does not give raise to the questions of law raised. Hence, both the appeals are dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax (Appeals-I)
   Company Circle (3),
   Chennai-34.

3. The Asst. Registrar,
   Income Tax Appellate Tribunal,
   Chennai Bench 'B'
   Besant Nagar, Chennai - 90.

4. The Commissioner of Income Tax,
   Chennai.

1 CC to Mr.T.Ravikumar, Advocate SR.No. 46381

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TEJ (CO)
PSI (21.09.2015)