

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.02.2015

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH**

T.C.A. NO. 1526 OF 2007

Commissioner of Income Tax
Chennai.

.. Appellant

- Vs -

S.K.Usman Ali

.. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 27.7.07 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, made in ITA No.2013/Mds/2005.

For Appellant : Mr. M.Swaminathan

For Respondents : Mr. T.N.Seetharaman

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the appellant/Revenue is before this Court by filing the present appeal. This Court, vide order dated 19.12.2007, admitted the appeal on the following substantial question of law :-

"In the facts and circumstances of the case, whether the

Tribunal was right in law in deleting the addition on the basis that the stock report furnished by the assessee though morally bad cannot be a reason for making the addition, particularly when in assessee's own case in respect of the earlier year on the similar set of facts, the matter has been remitted back to the authorities concerned?"

2. This case relates to difference in value of closing stock reckoned on the basis of the value determined by the bank and the value disclosed by the books of account as furnished to the commercial taxes department. Based on the difference in the value as provided to the bank and as reckoned from the books of accounts furnished to the commercial taxes department, the Assessing Officer came to the conclusion as follows :-

"Further, physical inventory of stock present was taken. The stock as per assessee's books was worked out as :-

Position as per Books

<i>Opening stock as on 01.04.2000 as per P&L Account</i>	<i>:</i>	<i>2,44,90,732.40</i>
<i>Purchase as on 09.01.01 as per Purchase Register</i>	<i>:</i>	<i>3,02,58,082.09</i>
	<i>:</i>	<i>5,47,48,814.49</i>
<i>Sales as per Register</i>		
<i>3,66,76,291.28</i>		
<i>58,68,206.60</i>		<i>3,08,08,084.68</i>
<i>3,08,08,084.68</i>		<i>2,39,40,729.81</i>
<i>Closing stock as on 09.01.2001 - 2,39,40,730.00</i>		

However, the physical inventory was found to be only

Rs.1,17,53,991/=.

In order to consider the discrepancies found during survey operations, a notice under Section 148 dated 18/04/2001 was served on the assessee on 21.04.2001. Notices u/s 143 (2) was issued on 03.11.2004 and duly served on the assessee, in response to which Shri Mhd.Khalilullah, CA was present from time to time and the case was heard.

After verification of the details called for and as per the materials available on record and gathered during survey operations, assessment is completed as under.

1. Suppression of closing stock :

During the course of assessment, the Asst. General Manager of Bank of India, Shri R.S.Naik from where the assessee has procured credit facilities, was summoned and was asked to produce copies of the assessee's stock statement as given to the bank. A perusal of the same showed that the assessee had furnished a detailed stock statement as on 31.03.2001 to the bankers i.e., Bank of India of Rs.6,10,29,770/=. However, the assessee has shown a closing stock in the return of income as on 31.03.2001 of only Rs.2,55,10,315/=. In respect of the discrepancy in the stock shown in the return, the assessee was requested to offer explanation. In response to this, the assessee stated through various submissions and petitions that the stock as shown in the return is the correct one and he has been giving inflated figures of stock to the bank for availing higher credit facilities from the bank.

3. On the the basis of the above findings, the Assessing Officer held as under :-

"In the assessee's case, the assessee has not maintained proper stock book and even the stock found during the physical inventorisation during the survey does not match with the assessee's book stock. Hence, the case laws quoted by the assessee do not hold good in his case.

Hence the assessee has suppressed stock worth Rs.3,55,18,955/-. The same is added back to his income as unaccounted investment. Further, the assessee has under reported gross profit on the same at 18.5% and hence Rs.65,71,006/- is added back to the assessee's income on this count."

4. Aggrieved by the said order of assessment, the assessee moved before the CIT (Appeals), who held in favour of the assessee following the decision in ***Commissioner of Income Tax – Vs – Anandha Metal Corporation (2005 (273) ITR 262)***. The relevant portion of the order of the CIT (Appeals), for better clarity, is extracted hereunder :-

"During the course of hearing, the learned AR submitted that on identical facts my predecessor in office had deleted a similar addition vide his order (supra) and since AO has not pointed out any fresh facts, I should also follow the aforesaid decision of my predecessor. He reiterated the arguments which he had put during the course of hearing of appeal for assessment year 2000-01, which apart from narrating the judicial pronouncements also gave a justification by saying that the GP rate for the assessment year 2001-02 is 18% as against the GP rate for immediately preceding year at 16.42%. In the written submissions dated 14.6.2005, running in 5

pages, he also relied on recent Madras High Court decision in the case of CIT – Vs – Ananda Metal Corporation (273 ITR 262). In the said decision, the High Court had stated that once the Sales Tax authorities had accepted the figure of sales, purchases and stock, the Income Tax authorities do not have any justification to tinker with the stock declared before the sales tax authorities and accepted by them. The learned AR also filed copy of the Sales Tax assessment for the year under consideration in which the book results of the applicant have been accepted.”

5. The Department, aggrieved by the above order, pursued the matter in appeal to the Tribunal. The Tribunal, taking note of the aforesaid decision in *Ananda Metal Corporation case (supra)*, as also its own order in ITA No.774/Mds/06, held as follows:-

"9. We find that the facts in the present case are identical to the one dealt by this Tribunal in I.T.A. No.774/Mds/06 for assessment year 2002-03 in the case of Shri Mitesh Dugar – Vs – Income Tax Officer. In this case (to which both of us were party) following was concluded :-

"Upon a careful consideration of the issue, we find that the authorities below have not detected any mistake or omission in the books of accounts or stock records of the assessee. It is also not the case that bank authorities have verified the assessee's stock in relation to the position at the close of the year. Under such circumstances, as expounded by the Hon'ble jurisdictional High Court in the case of CIT – Vs – N.Swamy 241 ITR 363, the burden was upon Revenue to prove that the

stock submitted to the Revenue authorities was erroneous. This burden could not be discharged by merely referring to the statement of the assessee to third parties. Under the circumstances and respectfully following the precedent, we set aside the orders of authorities below and decide the issue in favour of the assessee."

10. Considering the present case on the prism of aforesaid, in our opinion, there was no cogent material before the Assessing Officer to conclude that the stock statement submitted to bank was sacrosanct and actual representative of assessee's stock. In this view of the matter, we delete the addition on account of suppression of stock. Since the addition on account of suppression of stock has been deleted, the question of addition of gross profit thereon does not arise. In the background of aforesaid discussion and precedents, we decide both the issues raised in favour of the assessee and against the Revenue."

Aggrieved over the said order of the Tribunal, the present appeal has been filed by the Department.

6. When the case was taken up, upon hearing the counsel for the parties, with the consent of counsel on either side, the question of law is reframed in the following manner :-

"Whether the sales figures and turnover assessed by the sales tax authority could be relevant for determining the turnover of the assessee and not otherwise?"

7. Heard the learned standing counsel appearing for the appellant/Revenue and the learned counsel appearing for the respondent on the reframed question of law and also perused the materials placed on record.

8. The primary reason for the Department to file the present appeal stems from the earlier order of the Tribunal in respect of the assessee's own case for the earlier year, wherein the Tribunal had remanded the case back to the Assessing Officer. However, in the present case, the appeal has been allowed and, therefore, no uniformity has been maintained.

9. Though the above plea has been made by the Department, this Court is not inclined to entertain this appeal on the question of law raised at this point of time in view of the subsequent decision of this Court, which is also on the same issue, rendered in the case of ***Commissioner of Income Tax – Vs – Smt. Sakuntala Devi Khetan (2013 (352) ITR 484 (Mad))***, wherein it has been clearly held that the Assessing Officer has to adopt the figures and turnover finally assessed by the sales tax authorities. Similar issue was also considered in the case of ***CIT – Vs - Anandha Metal Corporation (2005 273 ITR 262 (Mad))***, and held in favour of the

assessee, which decision has been followed by the Tribunal in assessee's own case for the earlier year, wherein the matter was remanded back. In view of the consistent view of this Court as could be found from the above decisions, this Court is of the considered view that the contention of the Department has to fail. Accordingly, the ***substantial question of law is answered in favour of the assessee and against the Revenue.***

10. In the result, the appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (R.K.J.)
25.02.2015

Index : Yes/No

Internet : Yes/No

GLN

To

1. Commissioner of Income Tax
Chennai.

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

R.SUDHAKAR, J.
AND
R.KARUPPIAH, J.

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