

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.448 of 2007

Premkumar K.Khatri
14-B, Vepery High Road
Chennai - 600 003. ... Appellant

Vs.

The Income Tax Officer
Ward IX (3)
Chennai - 600 006. ... Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 28.2.2005 made in I.T.A.No.2957/Mds/2004 for the assessment year 2001-2002 against the Income - Tax Officer, Ward IX (3), Chennai made in PAN.No.AAAHP0593B/ 32243-P, for the Assessment year 2001-02 dated 09.02.2004;

against the order of the Commissioner of Income Tax (Appeals)-IX, Chennai - 600 034, dated 26.10.2004 made in IT/Appeal No.299 of 2004-05;

For Appellant : Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar
For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

The assessee has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 28.2.2005 made in I.T.A.No.2957/Mds/2004 for the assessment year 2001-2002, and the same was admitted on the following questions of law:

- (i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Assessing Officer to reopen the assessment invoking Explanation 2 to Section 153 of the Act?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Assessing Officer to reopen the assessment of an earlier year which would amount to enhancement of income?

2. This is an appeal by an over enthusiastic assessee, who, having fairly conceded before the Tribunal that the assessments of earlier years in which purchases were made can be reopened and he would have no objection to such action, is now challenging the direction given by the Tribunal to the Assessing Officer to reopen the assessment invoking Explanation 2 to Section 153 of the Act.

3.1. The brief facts of the case are as under: The assessee is a wholesale dealer in cloth. For the assessment year 2001-2002, he filed return of income on 9.10.2001. The return was processed under Section 143(1) on 18.10.2002. The regular assessment under Section 143(3) of the Act was completed on 26.3.2004.

3.2. During the course of assessment proceedings, the Assessing Officer noticed that certain credit balances were lying in the names of M/s.Rakesh Textiles; M/s.Salar Textiles and M/s.Salasar Synthetics totalling to Rs.17,82,150/-. The Assessing Officer issued notices to the said persons. All the notices were returned with endorsement "left". Thereafter, the Assessing Officer issued notice to the assessee as to why the amount standing to the credit of the above said firms should not be disallowed. The assessee stated that no purchases were made from those parties after 1996-1997. However, the Assessing Officer held that liability of the assessee towards the said firms ceased to exist and accordingly, assessed the above amounts under Section 41(1) of the Act. Further, the Assessing Officer made an addition of Rs.50,000/- towards insufficient drawings.

3.3. Aggrieved by the above said order, the assessee appealed to the Commissioner of Income Tax (Appeals), who confirmed the order passed by the Assessing Officer.

3.4. The assessee pursued the matter before the Tribunal contending that there was no remission of liability and, therefore, addition was not justified. The representative of the department pleaded that even if such amounts are excluded in the assessment year, direction may be given to the Assessing Officer to examine whether the purchases were bogus or not under Explanation 2 to Section 153 of the Act. In the rejoinder filed by the assessee before the Tribunal, while stating that addition has to be deleted in the relevant assessment year, it was fairly conceded that if the assessments of earlier years in which such purchases were made is reopened, he would have no objection to such action.

3.5. On this premise, the Tribunal came to hold that there was no evidence before the revenue that there was a remission or

cessation of such liability during the relevant assessment year. It was also found that the assessee has also not written off this liability during that year and, therefore, addition cannot be made during the assessment year as there was no remission or cessation of claim. However, as contended by the representative of the department and accepted by the authorised representative of the assessee, the Tribunal ordered reopening of the assessment of the year in which such purchases were made from those parties to examine whether such purchases were genuine.

3.6. Assailing the said order, the assessee has filed this appeal on the questions of law referred supra.

4. We have heard Mr.Venkat Narayanan, learned counsel for the assessee and Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

5. In the case on hand, admittedly, credit balances are lying in the names of third parties for long number of years and there are no purchases by the assessee from those parties after 1996-1997. That apart, it was found that no such persons reside in the addresses given by the assessee. Under such circumstances, necessarily these amounts have to be determined under one head or the other. If Section 41(1) of the Act does not apply to the facts of the present case, it has to be determined how the credit balances should be treated. The assessee had conceded before the Tribunal that assessment of the earlier assessment years relating to such purchases can be reopened and he has no objection to the same. The purpose of such concession is to determine the correct tax liability. It was under such circumstances, the Assessing Officer was directed to reopen the assessment of the year in which such purchases were made from third parties to examine whether such purchases were bogus or not. The net result of such a direction may also go in favour of the assessee, if he is able to prove the bona fides. The effect would be that the correct tax liability will thereafter be determined. We find that such a direction is in consonance with the provisions of Explanation 2 to Section 153 of the Act. Such a direction passed by the Tribunal in the present factual scenario, in our considered opinion, cannot be said to be erroneous.

For the foregoing reasons, this appeal is dismissed by answering the questions of law against the assessee and in favour of the revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals)-IX
Chennai.
4. The Income Tax Officer
Ward IX(3), Chennai.

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