

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

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

Tax Case (Appeal) No.582 of 2007

M/s.Kody Elcot Ltd.,
Type 11/7, 10th Street,
Dr.V.S.I. Estate,
Thiruvanmiyur, Chennai - 600 041.

.. Appellant

versus

The Joint Commissioner of Income Tax
Special Range XI, Chennai.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 07.11.2005 made in I..T.A..No.1286/Mds/1999 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 1996-97.

For appellant : Mr.C.V.Rajan

For respondent :Mr.T.R.Senthilkumar
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) filed by the Revenue as against the order of the Income Tax Appellate Tribunal was admitted by this Court on the following substantial questions of law:

"i. Whether on the fact and in the circumstances of the case the Tribunal was right in holding that the entire service charges on installation and commencing of equipments would accrue to the Appellant immediately after completion of installation and commission without appreciating that the Appellant had a corresponding obligation to provide services during the period of the warranty ?

ii. Whether on the fact and in the circumstances of the case the Tribunal was right in holding that once the addition under Section 69C has to be confirmed without appreciating that the First Appellate Authority has merely given a direction to the Assessing Officer to verify the probable expenditure that would have been incurred for earning the unexplained investment ?

2. The second substantial question of law admitted by this Court in relation to Section 69C - unexplained expenditure was not the issue before the Assessing Officer nor before the Tribunal. Hence, the

second substantial question of law admitted by this Court stands deleted.

3. In the course of the hearing before this Court, learned Counsel appearing for the assessee sought permission to raise additional questions of law. Hence, after hearing the learned standing counsel appearing for the Revenue, who had no serious objection for raising additional questions, the further substantial questions of law which are required to be considered, in addition to the above-said substantial question of law, are as follows:

"a) Whether on the fact and in the circumstances of the case, the Tribunal was right in reversing the order of the Commissioner of Income Tax (Appeals) who has held that the income would accrue only on the completion of the project?

b) Whether the Tribunal was justified in setting aside the order of the Commissioner of Income Tax (Appeals), who while accepting the case of the Department in relation to unexplained income, remanded the matter to determine the unexplained expenses?"

4. Heard learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

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

The assessment in this case relates to the assessment year 1996-97. The appellant/assessee is a public limited company dealing in medical equipments. It is a joint venture company with Electronics Corporation of Tamil Nadu Limited (in short, ELCOT) holding shares in the appellant company. The assessee filed return of income on 22.10.1996 declaring total income of Rs.30,50,272/-. The assessee also filed revised return of income on 12.1.1999 declaring income of Rs.34,95,540/-. The Assessing Officer completed the assessment and made the following three additions:

"i) Income of Electro Medical Maintenance Centre - Rs.4,61,642/-; ii) Service Charges - Rs.24,08,748/- and iii) Bank deposit in current account - Rs.7,44,340/-."

6. While completing the assessment, with regard to the addition made under the head 'income of Electro Medical Maintenance Centre', the Assessing Officer found that after adjustment of service charges and expenses incurred, the net income comes to Rs.4,61,642/-, which has not been included in the books of accounts. Before the Assessing Officer, the Authorised Representative agreed to add this amount

towards income. Hence, the Assessing Officer made addition of Rs.4,61,642/-.

7. With regard to the addition made under the head 'service charges received', the assessee contended before the Assessing Officer that the advances received from the customers as service charges could not be assessed in the current assessment year before the expiry of warranty period, since the income from the advances could not be correctly ascertained. However, the Assessing Officer took the view that service charges already received from the customers should be added as income in the assessment year in question.

8. With regard to the addition made in respect of deposits in the current account in the Indian Overseas Bank at Rs.7,44,340/-, the Assessing Officer recorded the submissions of the Authorised Representative of the assessee and added the said sum to the total income. For better clarity, the relevant portion of the order of the Assessing Officer reads as follows:

" The authorised representative Shri Vaidynathan was requested to explain whether the amount deposited in the current account has been reflected in the regular books of accounts and the trading receipts has been offered as

income or not. Xerox copy of the bank statement was handed over to the authorised representative. On 19.03.99, Shri R.Sundararaman, F.C.A., and Shri Ramachandran, Director of the company attended with the books of accounts, ie., ledger and bank book. Both of them confirmed that the above deposits in current account with I.O.B. has not been recorded in the trading receipts. They offered Rs.7,44,340 as income for A.Y.1996-97. Shri Ramachandran, Director submitted letter dated 19.03.99 written in his own handwriting. This account has been operated by all three whole time directors. The above facts are confirmed by the authorised representative and the Director confirmed that the income of Rs.7,44,340 has not been offered in the original return as well as return filed on 21st Jan. 1999. the same is added to the total income."

9. Aggrieved by the above-said three additions, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The contention of the assessee before the Commissioner of Income Tax (Appeals) was that only after completion of the warranty period and after ascertaining the quantum of expenditure, the actual income could be determined. It was stated that the assessee had offered this amount as income for the assessment year 1998-99. After considering the submissions made by the assessee, the Commissioner of Income

Tax (Appeals) deleted the addition of Rs.4,61,642/- holding that the profit from the project could be ascertained correctly and finally only on conclusion/completion of the project. The Commissioner of Income Tax (Appeals) directed the Assessing Officer to ensure that the entire income arising out of the project is brought to tax appropriately.

10. With regard to the advances received from the customers at Rs.24,08,748/- representing service charges, the assessee contended before the Commissioner of Income Tax (Appeals) that from the date of installation/commissioning the customers are entitled to one year warranty period and hence, the income could not be correctly ascertained from the advances unless the expenses are properly taken into account. The Commissioner of Income Tax (Appeals) accepted the contention of the assessee and deleted the addition of Rs.24,08,748/- and directed the Assessing Officer to ensure that the said sum was properly accounted for in the assessment year 1997-98.

11. With regard to the last addition made towards deposits in the current account at Rs.7,44,340/-, the submission of the assessee before the Commissioner of Income Tax (Appeals) was that the assessee had no objection in treating the deposits in the current

account of IOB as unexplained, the same should be allowed as deduction towards unexplained expenses incurred the assessee. The Commissioner of Income Tax (Appeals) held that this plea was not taken by the assessee before the Assessing Officer. Hence the Commissioner of Income Tax (Appeals) remitted the matter to the Assessing Officer for determining the quantum of unexplained expenses related to earning unexplained deposit of Rs.7,44,340/-.

12. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal.

13. With regard to the first issue on the deletion of addition of Rs.4,61,642/- being net income from Electro Medical Maintenance Centre, the Tribunal, after considering the submissions made on both sides, held that since the authorised representative of the assessee had agreed for including the income, the order of the Commissioner of Income Tax (Appeals) has to be set aside and accordingly restored the addition made by the Assessing Officer at Rs.4,61,642/-.

14. With regard to the second issue on the deletion of addition of Rs.24,08,748/- being service charges receipts, by the Commissioner of Income Tax (Appeals), the Tribunal held that once the assessee is following mercantile system of accounting, the service charges having accrued and received by the assessee in the present assessment year is relevant. Hence, the Tribunal set aside order of the Commissioner of Income Tax (Appeal) on this ground.

15. With regard to the third issue on the deletion of addition of Rs.7,44,340/- under the head 'deposit in current account' considered as unexplained, the Tribunal held that the said income had not been offered as income in the original return as well as in the revised return filed on 26.01.1997. Hence, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) on this issue also.

16. Aggrieved by the order of the Tribunal upholding the order of the Assessing Officer, the assessee is before this Court.

17. It is seen from the order of the Tribunal that the Assessing Officer had made three additions to the income of the assessee, which was confirmed by the Tribunal. On the first issue, namely, addition of

Rs.4,61,642/-, the Tribunal upheld the order of the Assessing Officer primarily on the plea that the Authorised Representative of the assessee had agreed for the inclusion of income and therefore, the Commissioner of Income Tax (Appeals) was not correct in deleting the addition.

18. On the next issue relating to service charges of Rs.24,08,748/-, the assessee claimed that they have received this amount from three customers representing service charges. Their plea was that the warranty condition was not terminated and therefore, it cannot be offered as income for that year and the Assessing Officer, however, took the view that on installation and commission of the equipment, service charges become due and has to be therefore brought to income for the assessment year 1996-97. On appeal by the assessee, the Commissioner of Income Tax (Appeals) deleted the addition. The Tribunal reversed the order of the Commissioner of Income Tax (Appeals) on the ground that the assessee was following mercantile system of accounting and the service charges that had accrued and received by the assessee for the relevant year should be added to income.

19. On the third issue relating to unexplained deposit of Rs.7,44,340/- in current account, the Tribunal came to hold that once it is accepted as unexplained income and it is not in relation to the trading receipt and offered as income for the assessment year 1996-97 coupled with the statement of the Directors of the company, who agreed for this, there was nothing illegal in the order of the Assessing Officer and the Commissioner of Income Tax (Appeals) was not correct in ordering remand to exclude the unexplained expenses.

20. On the first issue, we find that the assessee has now produced the assessment order for the assessment year 1998-99 wherein the assessee had offered the amount of Rs.4,61,642/- as income and was assessed accordingly.

21. Insofar as the second issue, the sum of Rs.29,39,092/-, which is part of Rs.24,08,748/-, which was omitted to be included in the return of income dated 16.11.1997, was offered as income in the assessment year 1997-98 by the assessee.

22. In such view of the matter, the first and second issues are remanded back to the Assessing Officer to verify and pass appropriate

orders.

23. On the third issue relating to addition of Rs.7,44,340/-, as has been clearly recorded by the Assessing Officer that this amount does not reflect as a trading receipt, but only as unexplained deposit coupled with the statement of Directors in the presence of Chartered Accountant that it was not offered as income of the said year, the Tribunal was justified in upholding the order of the Assessing Officer. The Commissioner of Income Tax (Appeals) was not correct in ordering remand for considering the issue, since it was neither canvassed by the assessee nor was the issue before the Commissioner of Income Tax (Appeals). The reasoning of the Tribunal which is based on material, which the Assessing Officer found on verification of the bank statement and other records for the relevant assessment year, is correct. The Tribunal has also found that the income has not been offered in the original return as well as in the revised return filed on 26.01.1997. Therefore, the Commissioner of Income Tax (Appeals) has no reason to order remand.

24. We find that the order of the Tribunal is justified and the same is confirmed on this issue. Accordingly, the third issue is

answered against the assessee and in favour of the Revenue.

25. For the foregoing reasons, we pass the following order:

“(i) with regard to the addition made by the Assessing Officer and confirmed by the Tribunal under the head 'Income of Electro Medical Maintenance Centre' at Rs.4,61,642/- and 'Service Charges' at Rs.24,08,748/-, the matter stands remanded back to the Assessing Officer for passing appropriate orders after verifying the assessment order passed subsequently and;

ii) with regard to the addition under the head 'Bank deposit in current account' at Rs.7,44,340/- the issue stands answered against the assessee and in favour of the Revenue.”

In the result, this Tax Case (Appeal) stands disposed of. No costs.

Index: Yes / No
Internet: Yes / No

(R.S.,J.) (R.K.,J.)
10.02.2015

sl

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

sl

To

The Income Tax Appellate Tribunal, Madras 'A' Bench.

Tax Case (Appeal) No.582 of 2007

10.02.2015