

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.3.2015

CORAM

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

T.C.(A).No.335 of 2008

Southern Sizing Mills
285, Eswaran Koil Street
Erode - 638 001.

.. Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax
Circle I, Erode.

.. Respondent/Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "D' Bench, Chennai, dated 30.11.2007 made in I.T.A.No.736/Mds/2006 for the assessment year 2002-2003.

against the Orders of the Commissioner of Income Tax Appeals-1 Coimbatore, Camp Office - Erode dated 16.1.2006 made in Appeal No.183/05-06 which was preferred against the assessment Order of the Deputy Commissioner of Income Tax, Circle -I, Erode in PAN/GIR No.AAFFS84972/ICF S0007 for the assessment year 2002-03.

For Appellant : Dr.Anita Sumanth

For Respondent : Mr.T.R.Senthil Kumar
Standing Counsel

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

This appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "D' Bench, Chennai, dated 30.11.2007 made in I.T.A.No.736/Mds/2006 for the assessment year 2002-2003 and the same was admitted on the following question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the

disallowance of a portion of the weaving charges paid and whether the Tribunal ought not to have held that in the facts and circumstances of the case, no portion of the expenditure can be disallowed?"

2.1. The facts in a nutshell are as under: The appellant/assessee is a firm engaged in the manufacture and sale of cloth. The assessee filed its return of income admitting total income of Rs.9,30,130/- on 1.10.2002. The return was processed under Section 143(1) of the Income Tax Act on 15.10.2002.

2.2. The case was taken for scrutiny and notice under Section 143(2) of the Act was issued. The authorized representative of the assessee appeared before the Assessing Officer and produced the books of account, which showed that the assessee is purchasing yarn and giving it to weavers for manufacture of cloth, and according to the learned counsel for the assessee, it is the consistent practice of the trade that weaving charges are paid to one person, who represents all the weavers, and payments are made through the Master Weaver. It was also submitted that the purchase and sales are supported by invoice/bills.

2.3. The Assessing Officer sought details of month-wise purchase and sales; manufacture and sales; break up details for closing and opening stock; vouchers for expenses claimed, etc. from the assessee and the assessee filed details on the subsequent hearing date. In the present case, we are concerned only with expenses paid towards weaving charges.

2.4. In the assessment order, it is observed that the assessee is purchasing yarn and pavoos and giving the same for weaving to the weavers. On verification of the vouchers produced for weaving charges paid, it was observed that one person has signed in the vouchers prepared in the names of various weavers. When a specific question was posed in this regard, the partner of the assessee firm stated that weavers are not coming to the business premises and, therefore, he obtained signature of the weavers through the single point contact person, namely, the Master Weaver. That explanation of the assessee was not accepted. According to the Assessing Officer, the vouchers are self-serving documents and the signature of one person on the vouchers leads to suspicion that the expenses under the head of weaving charges are inflated. The Assessing Officer held that the claim of weaving charges appears to be on higher side and, therefore, a sum of Rs.7,50,000/- was disallowed on weaving charges.

2.5. Assailing the said order, the assessee appealed to the Commissioner of Income Tax (Appeals), raising a specific plea as under:

"The Learned Assessing Officer ought to have appreciated the fact that the payment of Weaving Charges is under the wage settlement made between the Weavers Association and the Sizing Mills Owners' Association. Hence the Weaving Charges have been paid based on these and there is no necessity to inflate any expenses in this regard to the Appellant. Hence the additions made on assumptions by the Learned Assessing Officer is in error."

(emphasis supplied)

2.6. On the above plea, the Commissioner of Income Tax (Appeals) took a different route altogether by making a comparative study of the cloth manufacturing expenses for the preceding three years and arrived at the percentage of manufacturing expenses at 9.7%, 9.22% and 9.13% respectively as against the current year's 10.14%. Thereafter, he worked out the average of the three preceding years at 9.35% and the above percentage was recorded as reasonable percentage for allowance of cloth manufacturing expenses during the assessment year in question. Thus, the Commissioner of Income Tax (Appeals) worked out the reasonable cloth manufacturing expenses by adopting 9.35% of the total cloth manufactured during the year of the value of Rs.3,46,62,993 and allowed the cloth manufacturing expenses to the tune of Rs.32,40,990/-. After deducting Rs.32,40,990/- from Rs.35,13,929/- (which was claimed by the assessee), the Commissioner of Income Tax (Appeals) determined the amount towards excessive expenditure at Rs.2,72,939/-. In all, the Commissioner of Income Tax (Appeals) reduced the disallowance from Rs.7,50,000/- to Rs.2,72,939/-.

2.7. Aggrieved by the said order, the assessee pursued the matter before the Tribunal. The Tribunal gave a further relief of 10% out of the disallowance of Rs.2,72,939/-, in the following manner:

"2.3. Against this order of the learned Commissioner of Income Tax (Appeals), Assessee is in appeal before us. The learned counsel of the assessee contended that it is the practice of the trade that weaving charges be paid to one person representing all the weavers. It is also contended that comparing only manufacturing charges is not reasonable and fair and percentage needs to be compared with the increase in turnover also.

2.4. We have heard both the counsels and perused the relevant records. We find that it is admitted that the entire weaving charges paid is backed by payment vouchers signed by only one person whereas actually the payment belonged to various persons. On the facts of the case, comparison by reference to average manufacturing charges can also not be said to be unfair.

However, in view of increase in turnover, in this regard some flexibility in the said percentage can be granted in this case. Hence, in our opinion, the interest of justice will be served if 10% further relief is granted out of the disallowance of Rs.2,72,939/- made by the learned Commissioner of Income Tax (Appeals). We accordingly direct the Assessing Officer to grant this relief."

2.8. Calling into question the said order, the assessee has filed this appeal on the question of law referred supra.

3. We have heard Dr.Anita Sumanth, learned counsel for the assessee and Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the Revenue.

4. The main plea raised by the learned counsel for the assessee is that when a specific plea was made before the Commissioner of Income Tax (Appeals) that payment of weaving charges is under the wage settlement made between the Weavers Association and the Sizing Mill Owners' Association and the same was accepted by the Commissioner of Income Tax (Appeals), no disallowance ought to have been made on the manufacturing expenses claimed by the assessee.

5. We find that the Assessing Officer after rejecting the weaving charges as claimed by the assessee, disallowed a sum of Rs.7,50,000/-. There appears to be no reason or logic behind such disallowance of a sum of Rs.7,50,000/-, except saying that the vouchers signed by one person on behalf of all the weavers are not acceptable. That has been explained by the assessee and recorded by the Tribunal in paragraph 2.3 of its order to the effect that "it is the practice of the trade that weaving charges be paid to one person representing all the weavers."

6. As regards the order of the Commissioner of Income Tax (Appeals), though it looks somewhat logical to arrive at expenses on the basis of average, we are not inclined to accept such a procedure because expenses have been incurred and reflected in the books of account and, therefore, the same should be either accepted or rejected on the basis of specified data or parameters. The law of averages adopted by the Commissioner of Income Tax (Appeals) cannot be held to be justifiable, as in the case on hand books of accounts were properly maintained and produced before the Department. We are surprised to note that in the order of the Commissioner of Income Tax (Appeals), the average manufacturing expenses seems to be fluctuating from year to year. There is marginal increase in the manufacturing expenses every year and such increase cannot be simply brushed aside. We have to take into consideration the revision of wages, in the light to the terms of the wage settlement. That record speaks for itself and justifies the expenses as claimed by the assessee. This

is accepted by the Commissioner of Income Tax (Appeals) and the Tribunal. Therefore, there appears to be no justification in rejecting the books of account or the vouchers merely on the specious plea that one person signed for all the persons. As we have already stated, the Tribunal has clearly recorded that it is the practice of the trade that weaving charges are paid to one person, representing all the weavers.

7. In any event, we find that the Tribunal also was not correct in granting further relief of 10% with no rational or reason. The entire exercise of the department appears to be on conjectures and surmises. In the facts and circumstances of the case and in view of the reasoning given aforesaid, we find that the expenses claimed by the assessee are justified.

For the foregoing reasons, this appeal is allowed and the substantial question of law is answered in favour of the assessee and against 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 "D", Chennai.
2. The Commissioner of Income Tax (Appeals) - I
Coimbatore, Camp Office: Erode.
3. The Deputy Commissioner of Income Tax
Circle-I, Erode.

1 cc to Dr.Anita Sumanth ,Advocate, SR.No.15494
1 cc to Mr.T.R.Senthil Kumar ,Advocate, SR.No.15378

T.C. (A) .No.335 of 2008

sr(co)
pmk.8.4.2015