IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.01.2015

CORAM

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

T.C.A. NO. 986 OF 2007

The Commissioner of Income Tax
Coimbatore. .. Appellant

- Vs -

M/s. Jain Corporation
30, Abdulgani Street
Thirunagar Colony, Erode. .. Respondent

Appeal filed against the order dated 22.12.2006 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai made in ITA No.40/Mds/05.

For Appellant : Mr. M.Swaminathan, assisted by Ms. V.Pushpa

For Respondent : Mr. Philip George

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Income Tax Appellate Tribunal in dismissing the appeal filed by it, the Revenue is before this Court challenging the said order by filing the present appeal and this Court, vide order dated 9.7.07, framed the following substantial questions of law for consideration :-

"1) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the additions made towards the cash

credit for the assessment year 2001-2002?

2) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering the fact that Rule 46A had been violated by upholding the action of the CIT Appeals?

3) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the additions made without considering the specific findings of the assessing officer and going ahead with the fresh material placed before it without affording an opportunity to the assessing officer to cross examine the creditors?"

2. The respondent/assessee is a firm engaged in the business of textiles. The respondent/assessee filed return of income for the assessment year on 17.10.01. The said return was processed under Section 143 (1) of the Act on 23.5.02. Subsequently, the case was selected for scrutiny to examine the sundry credits amounting to Rs.109 Lakhs after approval of the competent authority. Notice under Section 143 (2) dated 11.6.02 was served on the assessee on 15.6.02 and after several hearings and perusal of the records, a letter was issued by the Assessing Officer on 18.3.04 indicating the stand to the Department to the effect as to why trade credits should be treated as not genuine, as certain transactions were not proved beyond doubt. The assessee was given an opportunity to file objections as to why the credit shown should not be taken as not proved and the said amount should not be added as income. After hearing, the Assessing Officer came to hold that certain trade credits are not genuine and the said amount was added to the income.

3. Against the said order, the assessee filed an appeal to the CIT (Appeals), who, after verifying the records produced by the assessee to support his plea that the trade creditors are genuine, took into account certain records and also called for a report from the Assessing Officer, and based on the reports of the Assessing Officer dated 9.8.04 and 24.9.04 and other

records, came to hold that the trade creditors are genuine. Along with the order, the CIT (Appeals) enclosed an annexure giving the details of the names of such party, the explanation offered by the assessee, bank payment details and banker's certificate and came to the conclusion that they are bona fide trade creditors and, therefore, the addition was deleted.

4. Aggrieved by the said order of the CIT (Appeals), the Revenue filed appeal before the Tribunal. The Tribunal, taking note of the detailed order passed by the CIT (Appeals), so also the report of the Assessing Officer as requisitioned by the CIT (Appeals), held that there was no case for the department to reject the claim and the original assessment and that the creditors were genuine trade creditors and dismissed the appeal, against which the present appeal has been preferred by the Revenue/appellant.

5. Heard the learned standing counsel appearing for the Revenue/appellant and the learned counsel appearing for the respondent/assessee.

6. From a perusal of the order passed by the CIT (Appeals) as well as the Tribunal, we find that the issue as raised is a pure question of fact as has been concurrently found by the CIT (Appeals) and the Tribunal. Accordingly, there being no infirmity in the above order of the Tribunal, the ***first question of law is answered in favour of the assessee and against the*** Revenue.

7. Insofar as the second question of law is concerned, since the procedure prescribed under the Act has been complied with, the ***second question of law is also answered in favour of the assessee and against the Revenue.***

8. In view of the answer to the second question of law, which has been answered against the Revenue, the third question of law being repetitive and academic, is not being dealt

with by this Court.

9. In the result, this Court is of the considered view that no interference is warranted with the order passed by the Tribunal and, accordingly, this appeal is dismissed. However, there shall be no order as to costs.

(R.S.J.) **(R.K.J.)**

05.01.2015

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Internet : Yes/No

GLN

To

1. The Commissioner of Income Tax
   Coimbatore.

2. The Income Tax Appellate Tribunal
   Madras 'D' Bench
   Chennai.

<u>R.SUDHAKAR, J.</u>
AND
<u>R.KARUPPIAH, J.</u>

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