IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

T.C.A.No.910 of 2014

Commissioner of Income Tax,
Chennai. ... Appellant/Appellant

vs.

Shaik Usman Ali,
No.19, Vannier Street,
Chennai - 600 001. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 27.11.2013, in I.T.A.No.372/Mds/2013 against the order passed by the Commissioner of Income Tax(Appeal) IX, on 27.11.12 made in ITA No.185/11-12, for the Assessment Year 2002-03, which was filed against the order of the Assistant Commissioner of Income Tax, Business Circle, IX, Chennai, dated 29.12.11 made in PAN/GIR.No. ABQPS2245 G

For Appellant : Mr.M.Swaminathan
Asst. by Mr.K.Suresh Kumar

For Respondent : Mr.T.N.Seetharaman

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The Assessee is the proprietor of M/s.Shah Sanitary Stores, Chennai. For the impugned Assessment Year (2002-2003), the Assessing Officer completed the 'scrutinity' assessment, by order dated 30.12.2009. During the course of scrutinity, the Assessing Officer found that the declared stock before the Bank (for availing cash credit facility) was Rs.7,23,98,153/- and that it did not match with the stock enlisted in the books maintained by the Assessee. There was a difference to the extent of Rs.4,81,53,843/-. This resulted in making of the addition of stock in assessee's income.

2. Aggrieved over the same, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals), and the appeal was allowed on 18.03.2010. Challenging the same, the Revenue preferred an appeal and the co-ordinate bench of the Tribunal remanded the issue back to the Assessing Officer. The Assessing Officer could not find any evidence to come to the conclusion that the actual stock of the Assessee was more than the book value, but, relied upon the fact that the assessee himself had declared stock of Rs.7,23,98,153/- and held that the difference has to be added in the assessee's total income.

3. The Assessee once again filed an appeal before the Commissioner of Income Tax(Appeals) and the CIT(A) allowed the appeal and ordered deletion of the above addition. Aggrieved over the same, the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Tribunal held that once the declaration of stock by the assessee to the Sales Tax Authorities has been accepted as such and the same also tallied with the book value, it is binding on the Income Tax authorities also and therefore, the CIT(A) is right in deleting the addition made.

4. Challenging the same, the Revenue is on appeal before this Court. This Appeal has been admitted, on the following substantial questions of law:

(i) Whether under the facts and circumstances of the case, the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) directing the Assessing Officer to delete the addition made towards difference in closing stock?

(ii) Whether under the facts and circumstances of the case, the Tribunal was correct in holding that the stock valuation accepted by the Sales Tax Authority is binding on the income tax authorities?

5. It is the case of the revenue that the stock statement furnished by the assessee to the Bank, at the time of availing loan facility, must be accepted as correct and that the assessee cannot be permitted to go back on the stock statement as it would amount to recognizing bad morality on the part of the assessee.

5.1. This issue has been answered in the decision of the Hon'ble Apex Court in the case of T.A.Qureshi vs. CIT (287 ITR 547), wherein, it has been held that cases are to be decided by the Court on legal principles and not on one's own moral views. The Tribunal has also relied upon a decision reported in 26 ITR 159 (Pandit Bros. vs. CIT), wherein, it was held that, the fact that profit appeared too low or that no stock register was maintained would not be sufficient material to reject the books of account; these would only be material for provoking further enquiry; the Income Tax Officer must discover other materials and evidence to come to such conclusion.

5.2. When the books of account is good enough for provoking further enquiry and not liable to be rejected on moral views, is there any other way by which the authenticity of the books of account can be checked/counter checked, is the issue to be decided.

5.3. The comparitive analysis and merits of the books of account/stock record, the declaration of stock submitted to the Revenue Authorities/Bank Authorities came to be considered in the decision reported in Shri Mitesh Dugar vs. Income Tax Officer and the relevant observation therein reads as under:

> "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 as 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."

5.4. In the said decision, it has been pointed out the authorities did not find any mistake or omission in the books of account of the assessee. Apart from that, the Bank authorities did not claim that they actually verified the assessee's stock. Therefore, the burden shifited on the revenue to prove that the stock statement submitted to the Sales Tax authorities was erroneous. There was no proof available for revenue to show that such statement to Sales Tax Authorities was wrong. Under such circumstances, the assessee contends that the inflated reporting of stock to the Bank should not be accepted, since the inflated statement was for the purpose of obtaining more cash credit facility.

5.5. Which out of the two authorities, whether the Bank Authorities or the Sales Tax Authorities would have been more interested in ascertaining the actual/exact stock maintained by the assessee. The Bank authorities are interested only to the extent of having the stock as security for the purpose of realizing the loan. On the other hand, the Sales Tax authorities are interested more in collecting the tax than in permitting evasion of tax. The Sales Tax Authorities, functioning under the statute, specially interested/empowered in collecting the exact amount of tax, would have been more professional in assessing the stock than the Bank authorities, who are merely interested in the overall value of the asset of the assessee only to ensure that there is enough security for the loan. On this score also, the stock value as accepted by the Sales Tax authorities should be given more credence. If one branch of the officials collecting tax do not accept the valuation by the other branch of the officials collecting tax, then there is no sanctity to the statutory functioning of which there is a presumption attached to the genuiness. Therefore, the contention that the valuation made by the Sales Tax Authorities would not be accepted by the Income Tax Authorities does not stand to reason.

6. It is the case of the Assessee that the closing stock declared by the Assessee and accepted by the Commercial Tax Department has been rightly accepted by the Income Tax Department (the Assessing Officer) and therefore, the confirmation of the same by the Income Tax Appellate Tribunal has to be upheld.

7. The learned counsel for the Assessee has brought to the notice of this Court the decision rendered by this Court in T.C.A.No.1526 of 2007, dated 25.02.2015, relating to the same assessee (for the Assessment year 2001-2002), whereunder, relying upon the decision reported in 2013 (352) ITR 484 (Mad) (Commissioner of Income Tax vs. Sakuntala Devi, Khetan), it has been held that the Assessing Officer has to adopt the figures and turn over finally assessed by the Sales Tax Authorities. This decision is binding upon the Revenue. Therefore, the contention of the Revenue that it has powers to tinker with the stock estimated by the Sales Tax Authorities cannot be accepted. Therefore, the appeal filed by the Revenue fails.

8. In the result, the appeal is dismissed. The order of the Income Tax Appellate Tribunal passed in ITA No.372/Mds/2013, dated 27.11.2013 stands confirmed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
   'B' Bench, Chennai.

2. The Commissioner of Income Tax (Appeal) IX,
   121, Mahatma Gandhi road,
   Chennai-34

3. The Assistant Commissioner of Income Tax,
   Business Circle IX,
   Chennai.

+1cc to Mr.T.N.Seetharaman, Advocate, S.R.No.2532
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.2533

ctk(CO)
srg(15/02/2016)