

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

T.C.A.No.428 of 2016

M/s.Miller Knits,
Tirupur. .. Appellant

versus

The Income Tax Officer,
Ward-I(4), Tirupur. .. Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in I.T.A.No.1942/MDS/2015, dated 27.11.2015.

For Petitioner : Mr.K.Ravi

For Respondent : Mr.T.R.Senthil Kumar

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to an order in I.T.A.No.1942/Mds/2015, dated 27.11.2015, for the Assessment year 2011-2012.

2. Facts leading to the appeal are that the appellant, a firm, filed its return for the Assessment Year 2011-2012 on 06.03.2013 admitting a total income of Rs.1,35,480/-. The income reported was processed, under Section 143(1). The case was taken up for scrutiny through CASS and notice under Section 143(2) of the Income Tax Act, 1961 was issued on 16.08.2013. The appellant's authorised representative appeared and submitted the details and records. The Assessing Officer completed assessment under Section 143(3) of the Income Tax Act on 17.02.2014, as hereunder:

i) The vouchers/bills were produced, for the expenses claimed under the heads "General Expenses" and "wages", out of which some of them were self made. Hence, a sum of Rs.1,00,000/- and Rs.2,00,600/- respectively are disallowed and added to the total income returned.

ii) The confirmation for advance given in the case of M/s.Yogesh Clothing Company to the tune of Rs.31,65,284/- is called for. The authorised representative of the assessee expressed his inability to produce the confirmation for the same and offered the same for taxation.

The Assessing Officer by disallowing the above, arrived at the gross total income of Rs.36,01,364/-. Tax payable was determined at Rs.16,40,340/-, including interest, under Section 234A to the tune of Rs.1,95,534/-,

interest under Section 234B to the tune of Rs.3,80,205/- and interest under Section 234C to the tune of Rs.565/-Thus accordingly, the Assessing Officer passed an order on 17.02.2014, under Section 143(3) of the Income Tax Act, 1961.

3. The assessee/appellant filed an appeal, in I.T.A.No.9/14-15 before the Commissioner of Income Tax (Appeals)-3, Coimbatore. After hearing the parties, vide order dated 24.06.2015, the Commissioner of Income Tax (Appeals)-3, Coimbatore, dismissed the appeal and that the same was confirmed by the Income-Tax Appellate Tribunal, "A" Bench, Chennai, vide I.T.A.No.1942/MDS/2015, dated 27.11.2015.

4. Aggrieved by the same, the assessee has filed instant Tax Case Appeal No.428/2016 on the following substantial questions of law:

1. Whether in the facts and circumstances of the case the Appellate Tribunal was right in holding that the appellant is not entitled to be allowed the expenditure incurred during the year on General expenses and wages to the tune of Rs.3,00,600/- on the reason that some of the vouchers being self generated may not be genuine,

2. Whether in the facts and circumstances of the

Appellate Tribunal was right in holding that the appellant's claim of the liability in respect Rs.31,65,284/- was not established as genuine, while accepting the existence of the liability.

5. Though the assessee has raised the aforesaid two questions of law, during arguments, Mr.K.Ravi, learned counsel for the appellant submitted that he is not pressing substantial question of law No.1. Submission of the learned counsel is placed on record.

6. However, seeking for an answer, in favour of the assessee, on the 2nd substantial question of law, learned counsel for the appellant submitted that the Tribunal has erred in law and on facts, in confirming the disallowance of advance given in the case of M/s.Yogesh Clothing Company, to the tune of Rs.31,65,284/-, without properly advertng to the evidence produced, by way of letter, dated 30.10.2015, issued by the State Bank of India, Trippur Branch, addressed to the assessee, which proves the genuineness of existence of creditors, and payments made.

7. According to learned counsel for the appellant, before the

Tribunal, the appellant had contended that the assessee was having regular trade transactions, with M/s.Yogesh Clothing Company, Tiruppur and to support the same, filed a letter, dated 30.10.2015 of State Bank of India, Tiruppur Branch, addressed to the assessee, confirming that a letter of credit was opened on 10.04.2010, for the value of Rs.90,06,890/-, and the beneficiary was M/s.Yogesh Clothing Company Ltd., Trippur. He submitted that when the Tribunal has observed that the assessee was able to prove the existence of liability, in respect of Rs.31,65,284/-, the conclusion of the Tribunal was not right in holding that the claim of liability was not established as genuine.

8. According to the learned counsel for the appellant, the observations of the Tribunal that the liability remains to be outstanding, only in the books of accounts of the assessee; the assessee was not able to produce the confirmation letter from the party; the assessee was not able to prove that the creditors in the books of account are genuine; and in the abovesaid circumstances, the appellant has failed to discharge its onus, cast on it, leading to dismissal of the appeal, requires reconsideration. He further submitted that existence of M/s.Yogesh Clothing Company is very much reflected, in the letter, dated

30.10.2015, issued by the State Bank of India, Tiruppur Branch and therefore, the observation of the Tribunal, against the assessee that there is a failure to prove that the creditors are not genuine, is not correct. For the abovesaid reasons, he prayed that the matter may be remanded to the Tribunal to adjudicate the existence of liability and balance, by giving opportunity to the assessee.

9. Per contra, referring to the orders of all the authorities, Mr.T.R.Senthil Kumar, learned counsel appearing for the respondent submitted that though an opportunity was given to the assessee to produce the confirmation letter from M/s.Yogesh Clothing Company Ltd., Tiruppur, to prove that there was an outstanding amount of Rs.31,65,284/-, the assessee himself expressed its inability to produce the same and that therefore, the abovesaid sum was disallowed.

10. According to the learned counsel appearing for the respondent, the assessee himself offered the same, for taxation and therefore, it is not open to him, to contend that both the Commissioner of Tax (Appeals) and Income-Tax Appellate Tribunal, Chennai, have erred in disallowing the abovesaid sum. When the assessee had not furnished

any documents to prove that there was any outstanding balance liability, muchless to the tune of Rs.31,65,284/-, the concurrent findings of the Comissioner of Income-Tax (Appeals), Chennai and the Income-Tax Appellate Tribunal, Chennai, do not warrant any interference. He submitted that no substantial question of law, arises in this appeal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

11. True that during the course of assessment proceedings, confirmation of advance given to the creditor, M/s.Yogesh Clothing Company, to the tune of Rs.31,65,284/-, has been called for and the authorised representative of the assessee has expressed his inability to produce the confirmation. Order sheet entry, dated 17.04.2014, reads thus,

"Shri.Saravanakumar, accountant of the assessee appeared and expressed his inability to produce confirmation in the case of advance given to Yogesh trading company for amount of Rs.31,65,284/-. He agreed for the addition of Rs.31,65,284/-. He concluded."

12. Thus, when there was no documentary proof of confirmation by M/s.Yogesh Clothing Company, Tiruppur, before the assessing officer and the appellant himself has offered to include the income of Rs.31,65,284/- to tax. Before the appellate authority, the appellant has made vague grounds that the assessing officer was not justified in allowing the payments made, as advance, to purchase yarn and cloth from M/s.Yogesh Clothing Company and thus, the assessing officer erroneously added Rs.31,65,284/-, to tax. Here again, before the appellate authority, the assessee has not produced any material document to substantiate the advance made.

13. But before the Income Tax Appellate Tribunal, the assessee has produced a letter, dated 30.10.2015, addressed to the assessee, by State Bank of India, Tiruppur Branch, which indicates that a letter of credit, dated 10.04.2010, has been opened in the State Bank of India, Overseas Branch, Tirupur and the said letter, is extracted hereunder:

"To

*The Managing Partner,
Miller Knits,
9/333, Lakshmi Nagar,*

Near Park College,
Palladam Road,
Arulpuram (PO),
Tirupur-641 605, India,

Dear Sir,

Sub: Your Request Letter, dated 26.10.2015 - Inland -
LC.No.0420110LC0000022, Value
Rs.90,60,890.00.

We hereby confirm Inland LC.No.0420110LC0000022,
Value Rs.90,06,890/- dated 10.04.2010, was open from our
branch application M/s.Miller Knits, Tirupur. Beneficiary
M/s.Yogesh Trading Company, Tirupur, through LC was
paid to SBI Overseas Branch, Tirupur, Amount : _
Rs.74,69,049/-, dated 20.07.2010. This is for your
information.

Yours faithfully."

14. Perusal of the photo copy of the details of the inland letter of credit, issued during the period from 01.04.2010 to 31.03.2011, by State Bank of India, Commercial Branch, indicates that a letter of credit was opened on 10.04.2010, for Rs.90,06,890/- and due date is also mentioned in the tabular column in Sheet No.1, stated to have been annexed with the letter, dated 30.10.2015, addressed to the assessee.

The letter, dated 30.10.2015, also indicates that some payments have been made to the beneficiary.

15. Let us consider a case, as to how, letter of credit operates. In **U.P.Co-operative Federation Ltd., v. Singh Consultants and Engineers (P) Ltd.**, reported in **1988 (1) SCC 174**, the Hon'ble Apex Court considered as to what, letter of credit means and at paragraphs 44 and 45, held as follows:

"44. The modern documentary credit had its origin from letters of credit. We may, therefore, begin the discussion with the traditional letter of credit. Paul R. Verkuil in an article [Bank Solvency and Guaranty Letters of Credit, Stanford Law Review V. 25 (1972-73 at p. 719)] explains the salient features of a letter of credit in these terms:

"The letter of credit is a contract. The issuing party-usually a bank-promises to pay the 'beneficiary'-traditionally a seller of goods-on demand if the beneficiary presents whatever documents may be required by the letter. They are normally the only two parties involved in the contract. The bank which issues a letter of credit acts as a principal, not as agent for its customer, and engages its own credit. The letter of credit thus 'evidences-

irrevocable obligation to honour the draft presented by the beneficiary upon compliance with the terms of the credit."

45. *The letter of credit has been developed over hundreds of years of international trade. It was most commonly used in conjunction with the sale of goods between geographically distant parties. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for the seller to rely upon the credit of an unknown customer. It was also found difficult for a buyer to pay for goods prior to their delivery. The bank's letter of credit came into existence to bridge this gap. In such transactions, the seller (beneficiary) receives payment from issuing bank when he presents a demand as per terms of the documents. The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the buyer and the seller must be settled between themselves. The Courts, however, carved out an exception to this rule of absolute independence. The Courts held that if there has been "fraud in the transaction the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else."*

16. Thus, material on record discloses that though before the assessing officer, the assessee had volunteered to offer Rs.31,65,284/-, to tax, before the Tribunal, he has filed a letter, dated 30.10.2015, issued by the State Bank of India, Trippur Branch, confirming that a letter of credit was opened on 10.04.2010 for value of Rs.90,60,890/-. While advertng to the submission of the assessee, the Tribunal has observed that, "in the normal course, everybody would ordinarily claim the dues and usually they take steps to recover the dues, if it is a genuine liability." and on the facts and circumstances of the instant case, further observed that, "the liability remans to be outstanding in the books of account of the assessee and the assessee was not able to produce confirmation letter from the party."

17. Though the Tribunal at Paragraph No.8.2 of the impugned order, has further observed that the assessee has failed to establish the genuineness of the liabilities, by producing supportive evidence, quite contrary to the same, at Paragraph 8.2 of the judgment, the Tribunal has observed that the assessee was only able to prove the existence of the liability, in respect of Rs.31,65,284/- and the balance was not

established, as genuine.

18. Observations extracted supra are contradictory. The assessment year is 2011-12. Letter of credit has been issued on 10.04.2010 for the previous year, to M/s.Yogesh Clothing Company. Therefore, when the assessee has produced evidence, the Tribunal, having observed that the assessee was able to prove the existence of the liability, in respect of Rs.31,65,284/-, ought to have considered the same in proper perspective, in the light of the trading activity of the assessee, which includes purchase of yarn and clothes, from M/s.Yogesh Clothing Company, Tiruppur.

19. As rightly contended that when existence of M/s.Yogesh Clothing Company, Tiruppur, and trade between the assessee and the said company, have been proved, by production of letter, dated 30.10.2015, issued by the State Bank of India, Tiruppur Branch and the details, extracted supra, the Tribunal ought to have addressed the same. The Tribunal has accepted the existence of liability. Having said so, it would not be appropriate to hold that the claim of liability in respect of Rs.31,65,284/- was not established, without proper appreciation of

evidence, adduced by the assessee.

20. In the light of our discussions, the appellant is entitled to succeed on the substantial question of law No.2, raised in this appeal. The impugned order is set aside, only insofar as the above issue is concerned. The matter is remitted back to the Tribunal to address the issue, as regards, advance given to M/s.Yogesh Clothing Company to the tune of Rs.31,65,284/-, by providing an opportunity to the assessee and to dispose of the same, within a period of four months, from the date of receipt of a copy of this order.

21. In view of the submission of the learned counsel for the appellant that he is not pressing the substantial question of law No.1, which we have recorded in the foregoing paragraph of this judgment, no answer is called for.

22. In the result, the Tax Case Appeal is disposed of, as indicated. No costs.

(S.M.K., J.) (D.K.K., J.)
10.08.2016

Index: Yes/No

Internet: Yes/No

To

The Income Tax Appellate Tribunal,
“A” Bench, Chennai.

S.MANIKUMAR, J.
AND
D.KRISHNAKUMAR, J.

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T.C.A.No.428 of 2016

10.08.2016