IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

T.C.A.NO.703 OF 2016

M/s. International Clearing and Shipping Agency,
Old No.158, New No.325,
Linghi Chetty Street,
Parrys, Chennai 600 001. .. Appellant

Vs

The Assistant Commissioner of Income Tax,
Business Range-VIII,
Chennai 600034 .. Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai, dated 11.2.2016 in I.T.A.No.93/Mds/2011.Appeal against the order of Commissioner of Income Tax(Appeals) in I.T.A.No.61/09-10 dated 25-10-10 on the file of Commissioner of Income Tax(Appeals)IX,121,Mahatma Gandhi Road,Chennai-34.against the order of the Additional Commissioner of Income Tax,VIII 1st Floor,Kannamal Building No.611,Anna Salai,Chennai-6 made in PAN/GIR No.AAAFI0178B dated 31.12.2009 for the assessment year 2007-08.

For Appellant : Mr. R. Vijayaraghavan
For M/s.Subbaraya Aiyar Padmanahan

For Respondent : Mr.M. Swaminathan

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J U D G M E N T

(Order of the Court was made by Dr.Anita Sumanth, J.)

This Tax Case Appeal is taken up for hearing and disposal at the stage of admission after hearing both parties.

2. The issue relates to allowance of expenditure incurred by the appellant on motor cars. The following Substantial Question of Law has been raised as arising from an order of the Income tax Appellate tribunal dated 11.2.2016.

'Whether, on the facts and in the

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circumstances of the case, the Tribunal was right in law in holding that the expenditure on motor cars was personal?'

3.In the course of assessment, expenditure on motor cars incurred by the appellant of an amount of Rs.12,44,473/- was partly disallowed by the assessing officer on the assumption that a portion thereof was personal in nature. In appeal before the Commissioner of Income Tax (Appeals), the number of cars was ascertained at 12 as against 17 as noted by the assessing officer and the ground of appeal allowed. In further appeal before the Income Tax Appellate Tribunal at the instance of the Revenue, the order of the Commissioner of Income Tax(Appeals) was reversed and that of the assessing officer restored.

4. Mr. R.Vijayaraghavan, learned counsel for the appellant draws our attention, to the Income Tax Rules, specifically Rule 3, that provides for a comprehensive method of valuation of perquisites, including motor cars and would submit that the Rule may be applied in the present case. Mr. Swaminathan, appearing for the Department, would object pointing out that application of Rule 3 was never invoked either at the stage of assessment or appeal.

5. Be that as it may, the purpose of Rule 3 is to provide a methodology to arrive at a proper valuation of perquisites. Rule 3(2)(A) sets out the manner of determination of the value of Motor Cars based on capacity and use. Clause B sets out the documentation required to be maintained to establish the incurrence of expenditure as a pre-condition to the claim thereof. Though the Rule addresses the computation of income under the head 'salaries' we do not see why the methodology prescribed therein cannot be applied in other situations as well, including the determination of a claim under section 37 of the Act. This is particularly so in a case such as the present one where the disallowance has been made only on the basis of a presumption of personal use.

6. We, thus remand the matter to the file of the assessing officer to be re-considered afresh including the application of Rule 3 of the Income Tax Rules, after ascertaining the number of cars that were owned and utilised by the appellant for the purpose of business during the relevant financial year. The appeal of the assessee stands allowed by way of remand. No costs. Consequently, connected C.M.P.No.14987 of 2016 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msr

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To
1.The Assistant Commissioner of
Income Tax,
Business Range-VIII,
Chennai 600 034.

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

3.The Commissioner of Income Tax(Appeals)-IX
Chennai 600034

4.The Additional Commissioner of Income Tax
Business Range-VIII 1st floor,Kannammal Buildings,
No.611,Anna Salai,
Chennai-600006.

+1cc to Mr.Subbaraya Aiyar Padmanabhan,Advocate sr.74492

+1cc to Mr.M.Swaminathan,Advocate sr.74496

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