IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.12.2016

Coram:
THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

TAX CASE (APPEAL) Nos.785 to 787 of 2016

Bay Container Terminal Private Limited,
Old No.18,New No.21, Swami Sivananda Salai,
Chepauk, Chennai 600 005 .. Appellant in all appeals

Vs

The Deputy Commissioner of Income Tax,
Corporate Circle 1(2)
Chennai 600 034 .. Respondent in all appeals

Prayer in T.C.A.No.785 of 2016: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, dated 25.5.2016 served on the appellant on 15.6.2016 in IT (SS) A.No.11/Mds/2015 for the Assessment Years 1990-91 to 1999-2000 and 2000-01 .

TCA.No.785/2016:Appeal against the order of the Commissioner of Income Tax Appeals dated 28/1/2015 in ITA NO 621/07-08-A/1 on the file of Commissioner of Income Tax, chennai-34 against the order of 1(2) dated 31.12.2007 for the Assessment year 1990-91 to 91 to 1999-2000 and 2000-2001 against the order of Joint Commissioner of Income Tax Special Range IV Chennai-34 in GIR.NO.PAN GO-B/AAACB 3622L for Assessment year 90-91 to 99-2000 & 2000-2001 dated 28.06.2001.

Prayer in T.C.A.No.786 of 2016: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, dated 25.5.2016 served on the appellant on 15.6.2016 in IT A.No.1260/Mds/2015 for the Assessment Year 2010-11.

TCA.No.786/16: Appeal against the order of the Commissioner of Income Tax(Appeals) in OLD ITA.No.462/13-14/A-1 dated 28.01.2015 in PAN.No.AAACB 3622L for the Assessment year 2010-2011 against the order of Assistant Commissioner of Income Tax in GIR PAN AAACB 3622L dated 28.03.2013 for the Assessment year -2010 -2011.

Prayer in T.C.A.No.787 of 2016: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal "D" Bench, dated 25.5.2016 served on the appellant on 15.6.2016 in ITA.No.1214/Mds/2015 for the Assessment Year 2010-11.

TCA.No.787/16: Appeal against the order of Deputy Commissioner of Income Tax Corprate Circle 1(2) dated 28.01.2015 made in OLD ITA.No.462/13-14/A-1 in PAN.No.AAACB 3622L for the Assessment year 2010-2011 against the order of Assistant Commissioner of Income Tax dated 28.03.2013 for the Assessment year 2010-2011.

For Appellant in all appeals : Mr. S. Sankaranarayanan

For Respondent in all appeals: Mr. T. Ravikumar,

Senior Standing Counsel.

COMMON JUDGMENT

(Judgment of this Court was delivered by Huluvadi G.Ramesh, J.)

The above appeals have been preferred by the assessee against the order of the Income Tax Appellate Tribunal.

2. Heard Mr.S.Sankaranarayanan appearing for the appellant and Mr.T.Ravikumar, Senior Standing counsel appearing for the respondent.

TCA.No.785 of 2016

3. Pursuant to a search and seizure made on the office premises of the assessee as per the Warrant of authorisation on 30.6.99, a notice under section 158 BC(1) was issued to the assessee requesting to file its return in form 2B indicating the undisclosed income in respect of assessment year 1990-91 to 99-2000 and 2000-2001 and thereafter the assessing officer, on noticing various discrepancies towards undisclosed income pertaining to 1996-97 to 1999-2000, passed an assessment order under section 158BC demanding a sum of Rs.1.47 crores on 28.6.2001. On filing of rectification petition by the assessee, the demand was reduced to Rs.1.33 crores vide order dated 18.2.2002 by the Deputy Commissioner of Income Tax. In appeal before the Commissioner of Income Tax (Appeals) by the assessee, the order dated 28.6.2001 was set aside on the ground that the assessing officer without making any independent investigation to verify the genuineness and correctness of the

claim made, has computed the undisclosed income of the appellant and thereby allowed the appeal. Aggrieved against the order passed by the Commissioner of Income Tax (Appeals) the Department preferred appeal before the Income Tax Appellate Authority by contending that the onus lies on the assessee to prove that the accounts contained in the seized documents does not relate to the actuals and it is for him to reconcile the difference and once that has not been done by the assessee, the assessing officer is empowered to make the additions under section 132(4A) of the I.T.Act.

4. The Income Tax Appellate Authority, by order dated 20.10.2006, restored back the matter to the file of Assessing Officer to decide it de novo in accordance with law after providing an opportunity of personal hearing to the assessee and sets aside the order impugned before it. The assessement officer, after giving an opportunity of personal hearing to the assessee, passed an order dated 31.12.2007, computed the total undisclosed income as Rs.1,32,87,523/-. The above said order was again challenged by the assessee before the Commissioner of Income Tax (Appeals) who confirmed the order passed by the assessment officer, vide order dated 28.1.2015, which order was assailed by the assessee before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal, on being found that the appeal was filed 58 days belatedly and the assessee has not filed any petition to condone the delay in filing the appeal, came to the conclusion that the appeal filed by the assessee is not maintainable being defective and dismissed the same.

5. The tribunal rejected the appeal on the ground that the same is time barred, however, the assessee has tendered an explanation to the effect that the date of service of the order is not 28.1.2015 as inadvertently pointed out in Form 36, but it is 28.3.2015 and, hence, the appeal was on time and not barred. This has been proved vide letter filed by the assessee dated 15.7.2015 in response to the notice dated 6.7.2005 issued by the Registrar of the Income Tax Appellate Tribunal. However, the explanation has not been considered in proper perspective by the tribunal which decided that the appeal is, infact time barred. Considering the materials as noted above, we are of the opinion that the onus lies on the assessee to establish that the service of the impugned order was in fact on 28.3.2015 and not on 28.1.2015. Hence, T.C.A.No.785 of 2016 stands remanded back to the Department to hear the appeal on merits, on the question of the explanation offered by the assessee with regard to delay . No costs.

6. The assessee company who is engaged in the business of storage, handling and repairs of marine containers filed its return of income for the assessment year 2010-2011. The assessing officer, who processed the same under section 143(3) disallowed the expenses of plot maintenance and development purchases vide order dated 28.3.2013. The said order was assailed before the Commissioner of Income Tax (appeals),who vide order dated 28.1.2015 partly allowed the appeal on the ground that the disallowance made by the assessing officer will become unlawful for want of independent evidence and directed the assessing officer to withdraw the disallowance. Aggrieved against the order of Commissioner of Income Tax (Appeals), the Revenue and assessee preferred appeals in Appeal No.1214/mds/2015 and Appeal No.1260/Mds/2015 respectively before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal, after considering the contentions on both sides, dismissed the ground raised by the assessee and allowed the appeal filed by the revenue by confirming the order passed by the Commissioner of Income Tax (Appeals). The order passed by the Iower appellate authority in Appeal No.1214/mds/2015 and Appeal No.1260/Mds/2015 is assailed before this Court by the assessee in TCA.Nos.787 and 786 of 2016 respectively.

7. Sofar as TCA.No.786 of 2016 is concerned, the issue involved is whether the ledger extracts relating to leasehold land and the contractors bill relating to own land constitutes sufficient reason for treating the two expenditures differently.

8. Certain of the grounds raised by the appellant in the form of question of laws could have been answered easily by the tribunal itself. instead of straight away dismissing the appeal . The nature of expenses being incurred could be considered in detail only after looking into the details of accounts maintained by the assessee. In such circumstances, we are of the view that unless the details furnished by the assessee has been considered in its proper perspective and a reasoned order is passed by the tribunal thereupon, the grievance of the assessee that the order has been passed mechanically without application of mind cannot be brushed aside. In that view of the matter, we opine that no prejudice would be caused if one more opportunity is given to the appellant to submit all the explanation which could be considered by the Tribunal. Accordingly, the matter is remanded

back to the **Income Tax Appellate Tribunal*** for fresh consideration. The Department shall offer a reasonable opportunity of personal hearing to the appellant/assessee and look into all the details of the account furnished by it and pass orders in accordance with law, including the aspect of maintainability etc., and to arrive at a conclusion on merits. T.C.A.Nos.786 of 2016 stand disposed of by way of remand. No costs.

9. The substantial questions of law in T.C.A.No.787 of 2016 have in fact been answered by the tribunal by way of remand to the assessing officer. Both parties agreed that the order of the remand to the Assessing Officer is sufficient and that the parties will have the issue redressed before the Assessing Officer. In view of the above stand of the parties, T.C.A.No.787 of 2016 is disposed of in terms of the order of remand passed by the tribunal.

10. Accordingly, all the appeals stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar
dated 06/02/2017

Corrected as per order
dated 23.2.2017 and made in
TC(Appeals) Nos.785 to 787/16

Sd/-
Assistant Registrar
dated 06.03.2017

True Copy

Sub-Assistant Registrar

To
1.The Assistant commissioner of Income Tax
Corporate Circle 1(2)
Chennai-60 034

2.The Commissioner of Income Tax
Chennai-1

3.The Joint Commissioner of Income
Special Range IV Chennai-34

To be substituted to the order already despatched on 23.2.17

4.The Deputy Commissioner of Income Tax
Corporate Circle 1(2)
Chennai-600 034.

+2 ccs to Mr.R.Shankaranarayanan Advocate sr 71847
+3 ccs to Mr.T.Ravikumar Advocate sr 71636,71637,71638

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aa08/02/2017

EU 07.03.17