THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

ITTA NOS. 129, 130 AND 132 OF 2014

DATE: 7th NOVEMBER 2017

Between:
Commissioner of Income Tax-II,
Hyderabad.

… Appellant

AND

M/s Transport Corporation of India,
Secunderabad.

… Respondent

Counsel for the Appellant : Sri B. Narasimha Sarma
Senior Standing Counsel
for IT Department

Counsel for the respondent :

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The respondent assessee, carrying on the business of transportation of cargo, having nation-wide operations, felt aggrieved by assessment made for the Assessment Years 2008-09 and 2009-10, by the Assessing Officer (AO). It therefore, filed Appeals before the Commissioner of Income Tax, questioning the assessment under three heads; namely 1) disallowance of freight charges; 2) disallowance of commission/incentives paid to third parties; and 3) disallowance of *en route* expenditure. The Commissioner of Income Tax (CIT) partly allowed the assessee's Appeals. With respect to disallowance of freight charges, AO has disallowed 5% on the expenditure claimed by the assessee. However, the CIT modified the same by restricting disallowance to 1%. The Tribunal further modified the Order of the CIT by disallowing expenditure only to the extent of 37 parties, who did not appear before AO, in pursuance of the notice issued by him for the AY 2008-09 and in respect of eight parties, who did not appear before the AO for the AY 2009-10. As the Revenue has not questioned this part of the Order of the Tribunal, it is not necessary for us to discuss the same in these Appeals. As regards payment of commission/incentives for the AY 2008-09, the total amount debited towards commission was

Rs.90,40,558/-. Out of the said amount, amount paid by crossed account payee cheque was Rs.67,36,472/-. The assessee has furnished full particulars of the cheque payments to the AO, who verified those particulars. The claim of the assessee was that the remaining sum of Rs.23,04,086/- was paid in cash. The AO has disallowed the entire cash payments. However, CIT(A), relying upon the Order dated 25.01.2012 in ITA No. 1214/Hyd/04 for AYs 2000-01 to 2005-06 and also a judgment of this Court, directed disallowance of commission of 15% of cash payments and ordered relief for the remaining amount.

As regards the disallowance of commission for AY 2009-10, a sum of Rs.76,66,777/- was covered by crossed account payee cheques, details of which were produced before the AO and the remaining sum of Rs.5,48,520/- was claimed to have been paid in cash. While the AO has disallowed the entire cash payment, the CIT (A) has followed the same course as he has done in respect of AY 2008-09. The Revenue as well as the assessee filed the respective Appeals before the Tribunal. The Tribunal confirmed the order of the CIT(A) in *toto*.

With respect to *en route* expenditure, the assessee has claimed expenditure of Rs.12,77,15,333/- for the AY 2008-09. The AO disallowed the entire expenditure. Even in respect of this disallowance, CIT(A) has followed the same method, which he has followed in respect of disallowance of commission/incentive, both for AY 2008-09 and 2009-10. Similarly, the Tribunal has confirmed the order of the CIT(A) as in case of disallowance of commission/incentive. From the detailed reasons given by the Tribunal, it is evident that it has found the decision of the CIT(A), taken on the facts and circumstances of the case and following the earlier judgment of the Tribunal as well as this Court and after verification of the entire material on record, as highly reasonable and rational. Therefore, we do not find any error of law committed by both the appellate fora below.

As the orders of both the appellate authorities are mainly based on the facts of the case and the material on record, we do not find any substantial question of law arising in these Appeals.

The Appeals are accordingly, dismissed. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

07th November 2017

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