

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

ITTA NOs.108 AND 318 OF 2017

C O M M O N O R D E R
(Per Hon'ble Sri Justice Sanjay Kumar)

These appeals by the revenue under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act of 1961') arise out of the common order dated 30.10.2009 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'B', (*hereinafter*, 'the Tribunal') in relation to the same assessee, Madhu Enterprises. ITTA No.108 of 2017 arises out of ITA No.301/Hyd/07 relating to assessment year 2004-05 while ITTA No.318 of 2017 pertains to ITA No.300/Hyd/07 relating to assessment year 2003-04.

The questions of law sought to be raised by the revenue are also on the same lines. In ITTA No.108 of 2017, the following substantial questions of law are framed:

'1. Whether on the facts and in the circumstances of the case the order of the Tribunal is perverse'

Whether on the facts and in the circumstances of the case the Tribunal is correct in law in setting aside the order of the CIT(A) disallowing the expenditure u/s.40A(3) of the Act?'

In ITTA No.318 of 2017, the following substantial questions of law are put-forth by the revenue:

'1. Whether on the facts and in the circumstances of the case the order of the Tribunal is perverse?

2. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in allowing the expenditure of Rs.1,54,01,075/- towards 'processing charges'?

3. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in setting aside the order of the CIT(A) disallowing the expenditure u/s.40A(3) of the Act?'

Heard Smt.M.Kiranmayi, learned counsel representing Sri J.V.Prasad, learned senior standing counsel for the revenue, and Sri C.P.Ramaswami, learned counsel for the respondent-assessee, who put in his appearance at the stage of condonation of the delay of over 2,400 days in the representation of these appeals.

The assessee is engaged in the business of supplying second hand bottles to M/s.Mc.Dowell & Company Limited. The assessee buys second hand bottles from suppliers and after subjecting the same to washing and sorting, it supplies the same to M/s.Mc.Dowell & Company Limited, with whom it has a written understanding. According to the assessee, the second hand bottles are subjected to the process of cleaning involving use of human labour for washing the bottles with not only water but also hydrochloric acid, soap and oil, at various stages.

In so far as allowing of expenditure to the tune of Rs.1,54,01,075/- for assessment year 2003-04 towards processing charges is concerned, perusal of the order under appeal reflects that the Tribunal found that the sales-tax turnover for August, 2000 tallied with the number of bottles supplied to and billed by M/s.Mc.Dowell & Company Limited. The processing charges paid for August, 2000, as per the cash book, were for these bottles and worked out to 16% of the turnover. This calculation for August, 2000 was based on the available seized records. The Tribunal observed that the lower authorities estimated the probable expenditure incurred towards processing charges, without reference to the seized documents, based purely on surmise and suspicion. Basing on the processing charges, calculated on the strength of the documented details of August, 2000, the Tribunal found that the expenditure

claimed by the assessee was in order and justified. It is on this basis that the Tribunal set aside the disallowance of this expenditure and upheld the claim of the assessee. No material is placed before us to discount the credibility of the recorded data of August, 2000 to categorize the reliance thereon by the Tribunal as perverse.

The second ground raised by the revenue in these appeals is with regard to disallowance of expenditure under Section 40A(3) of the Act of 1961. The assessing officer found some deposits in the accounts of three individuals, Srinivas, Sadanand and Kishore and opined that these accounts belonged to the assessee or its partner, Madhusudhana Reddy. He therefore treated these deposits as unexplained cash credits under Section 68 of the Act of 1961.

On appeal by the assessee, the Commissioner of Income Tax (Appeals) held that the assessee had taken a circuitous route to avoid the provisions of Section 40A(3) of the Act of 1961 and directed the assessing officer to disallow 20% of the deposits made in cash and cheque in the bank accounts of the three named individuals. In effect, the Commissioner deleted the addition on account of cash credits under Section 68 of the Act of 1961 and replaced the same with disallowance under Section 40A(3) thereof.

Aggrieved thereby, the revenue and the assessee both raised this issue before the Tribunal. Having considered the same, the Tribunal found merit in the assessee's contention that all the payments, wherever they exceeded Rs.20,000/-, were made only by way of account payee demand drafts or through transfer from the current account of the assessee's firm to the current accounts of its agents, the three individuals named above. The Tribunal also found merit in the contention of the assessee that the purchases of bottles

were made from rag pickers through the agents representing different districts and, consequently, DDs were purchased in the names of the agents and payments were made to such rag pickers through them. The Tribunal further found favour with the assessee's contention that Rule 6DD(k) of the Income Tax Rules would cover the transaction and accordingly held that no disallowance was called for in terms of Section 40A(3) of the Act of 1961 and that the same could not be treated as cash credits under Section 68 of the Act of 1961.

The aforesaid conclusions drawn by the Tribunal were on the strength of the material documents produced by the assessee. Basing on such documentary evidence, the Tribunal drew appropriate conclusions. Being the final fact finding authority, the inferences drawn by the Tribunal on facts would ordinarily not be open to scrutiny in an appeal under Section 260A of the Act of 1961.

No doubt, in both the appeals, the revenue has raised the ground that the common order under appeal is perverse, but in the light of the analysis by the Tribunal on the issues raised as set out *supra*, we find no merit in this contention. The findings of the Tribunal on both the issues on the strength of the material placed before it are clearly justified.

We therefore find no question of law, much less a substantial one, arising in these appeals as the matter entirely turned upon factual aspects. The appeals are accordingly dismissed. No costs.

SANJAY KUMAR, J

M.S.K.JAISWAL, J

5TH JUNE, 2017
PGS