IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.1379 of 2008

M/s.Lakshmi Card Clothing Mfg.Co.(P) Ltd.,
No.1089, Avanashi Road,
Pappanaickenpalayam,
Coimbatore-641 037 .... Appellant

-vs-

The Deputy Commissioner of Income Tax,
Company Circle-IV(1),
IT Office, Race Course,
Coimbatore-641 018 ... Respondent

Tax Case Appeal filed, under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 12.10.2007 in ITA No.127/Mds/2005, for the Assessment year 1998-99.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.T.R.Senthil Kumar

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the assessee, filed under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in ITA No.127/Mds/2005, for the Assessment year 1998-99.

2.The Appeal has been admitted, by order dated 09.09.2008, on the following Substantial Questions of Law:

> *"1.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the appeal filed by the appellant was not maintainable?*
>
> *2.The Income Tax Appellate Tribunal having held that the appeal was not maintainable, whether was right in not holding that the CIT(A) also did not have jurisdiction to consider the appeal filed before him and therefore, the enhancement made by the CIT(A) was invalid and void?*

3.Whether it is right in law that as per the Explanation to Section 140A of Income Tax Act, 1961, the payment made by the appellant pursuant to the demand raised vide intimation under Section 143(1)(a) had to be appropriated towards interest first and thereafter towards the tax?"

3.Heard Mr.M.P.Senthil Kumar, the learned counsel for the appellant and Mr.T.R.Senthil Kumar, the learned Standing Counsel for the respondent.

4.Though in this appeal three Substantial Questions of Law have been raised, the first issue to be considered is as to whether the Tribunal was justified in rejecting the appeal filed by the assessee as not maintainable on the ground that they have not questioned the charging of interest under Section 234-B of the Act. The second and more important question would be whether the Commissioner of Income Tax (Appeals) ('CITA' for brevity) was right in computing the interest, which is resulted in an enhancement and finding fault with the computation done by the Assessing Officer. The subsidiary point on the second issue would be whether the CITA has considered the assessee's objection that Explanation to Section 140A(1) of the Act will have no application to the case on hand.

5.The assessment year in question is 1998-99. The assessee filed its return of income on 30.11.1998, admitting an income of Rs.4.15 Crores. An intimation under Section 143(1)(a) of the Act was issued on 07.12.1998. After which, on three different dates, the Assessee had effected the following payments, viz., on 30.12.1998-Rs.1 Crore, on 30.1.1999-Rs.50 lakhs and on 24.2.1999-Rs.23,54,303/-. Thereafter, proceedings were initiated and an order under Section 143(3) was passed on 27.11.2000, computing the income of the assessee at Rs.6.07 Crores. This was challenged by the assessee before the CITA, who allowed the assessee's appeal in part. Aggrieved by the same, the assessee filed appeal before the Tribunal, which allowed the appeal in its entirety. Thus, the computation of income at Rs.6.07 Crores, by order passed under Section 143(3) of the Act, was held to be wrong. While giving effect to the order passed by the Tribunal, the Assessing Officer passed an order dated 10.07.2003. The dispute is with regard to the computation of interest under Section 234-B of the Act. The Assessing Officer applied the principle explained in Explanation to Section 140-A of the Act and adjusted the payment as against the interest first and then towards the tax. Consequently, the Assessing Officer calculated the interest under Section 234-B of the Act at Rs.33,59,265/- as against the amount computed by the assessee at Rs.27,83,741/-. Aggrieved by the same, the assessee filed appeal before the CITA.

6.The main point canvassed by the assessee is that the Explanation to Section 140(A)(1) of the Act should not have been applied to the assessee's case as it is a special provision and it is to be applied only for that purpose for which it was inserted and not for any other purpose. Further it was contended that the assessee, who does not pay self-assessment tax, but pays it only immediately after intimation under Section 143(1) of the Act, will have to pay the higher amount of interest only and there is no anomaly as pointed out by the Department. The CITA, while passing the order dated 10.11.2004, held that the principles explained in Explanation to Section 140(A)(1) of the Act are applicable to the facts of the assessee's case. However, we find that no reasons have been assigned. Apart from that, the CITA did not consider the contention raised by the assessee by referring to Section 234-B(2)(ii) of the Act. Further, the CITA held that the interest payable by the assessee is Rs.33,59,265/- and not

Rs.34,45,059/- as worked out by the Assessing Officer. Thus, that resulted in an enhancement of interest payable by the assessee.

7.The assessee preferred an appeal to the Tribunal under Section 253 of the Act. Sub Section (1)(a) of Section 253 of the Act states that any assessee, aggrieved by an order passed by the Commissioner of Income Tax (Appeals) under Section 250 of the Act, may appeal to the appellate Tribunal. The Tribunal was of the view that the assessee's appeal is not maintainable since they did not object to the charging of interest.

8.In our considered view the Tribunal committed an error in making such an observation because what the assessee had objected to is not charging of interest, but the computation, resulting in enhancement. In such circumstances, whether the appeal would be maintainable would be the question.

9.The Tribunal referred to the decision in the case of **Central Provinces Manganese Ore Co. Ltd., vs. Commissioner of Income Tax [160 ITR 961(SC)]**. We find that the said decision would come to the aid of the assessee. Since the ratio laid down in the said decision was that waiver or reduction of interest cannot be subject matter of an appeal and it can be dealt with only by the Commissioner of Income Tax (Appeals) in revisional jurisdiction. Further it has been pointed out that an appeal against charge of interest is maintainable, provided the assessee limits himself to the ground that he is not liable to the levy at all.

10.In the instant case, the assessee questions the levy firstly on the manner of computation and whether the Assessing Officer was correct in adopting the procedure explained in Explanation to Section 140-A(1) of the Act. Further, in the case on hand, we find that there has been an enhancement of payment of interest.

11.Mr.T.R.Senthil Kumar, the learned Counsel for the Revenue vehemently contended that this is only a computation error or an arithmetical error.

12.Be that as it may. If an assessee is called upon to pay additional amount than what has been quantified, which was also under challenge, elementary principle of natural justice would require that the assessee be given an effective opportunity. As pointed out earlier, the Assessing Officer has not given any specific finding as to why the contention of the assessee that Explanation to Section 140(A)(1) of the Act will have no application. This is also a reason, which has weighed in our mind to hold that the matter requires a fresh examination. As pointed out above, the decision in the case of **Central Provinces Manganese Ore Co. Ltd.,** will aid the assessee's case and the Tribunal was not right in holding that the appeal was not maintainable, as the appeal was not against an order rejecting the request for waiver. In any event, appeal under Section 253(1)(a) of the Act is maintainable before the Tribunal, as the order impugned before the Tribunal is an order passed under Section 250 of the Act.

13.Thus, for the above reasons, we are of the considered view that the matter should be remanded to the Commissioner of Income Tax (Appeals) to take a fresh decision on merits and in accordance with law. Accordingly, the appeal filed by the assessee is allowed. The orders passed by the Tribunal and the Commissioner of Income Tax (Appeals) are set aside and the matter is remanded to the Commissioner of Income Tax (Appeals) for fresh consideration, who shall take note of the submissions of the assessee and pass fresh orders on merits and in accordance with law. The Questions of Law framed for consideration are answered accordingly. Since the assessment pertains to the year 1998-99, the Commissioner of Income Tax (Appeals) is required to give preference to this matter and dispose of the same at the earliest, preferably within a period of three months from the date of receipt of a copy of this order. No costs.

[T.S.S., J.] **[N.S.K., J.]**

msk **19.11.2018**

Index:Yes/No

To

1.The Income Tax Appellate Tribunal Madras 'D' Bench.

T.S.Sivagnanam, J.
and
N.Sathish Kumar,J.

msk

T.C.A.No.1379 of 2008

19.11.2018