IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

T.C.A.Nos.144 & 145 of 2011

M/s.Tip Top Platstics Private Limited,
No.9, Kasi Chetty Street,
Chennai - 600 001. .. Appellant in both appeals

Vs

The Assistant Commissioner of Income Tax,
Company Circle I (Inv),
Chennai. .. Respondent in both appeals

Common Prayer: Tax Case Appeals are filed under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 09.08.2004 in ITA Nos. 1260 & 1261/Mds/1995, for the Assessment years 1981-82 & 1982-83 respectively.

Against the order of the Commissioner of Income Tax (Appeals)-V, Madras dated 27.03.1995 made in I.T.A.Nos.32/90-91 and 34/90-91 against the order of the Assistant Commissioner of Income Tax Company Circle-I(Inv), Madras dated 19.03.1990 made in G.I.R.No.1-T, for the Assessment yeaar 1981-82 & 83 respectively.

For Appellant : Mr.Ashok pathy for M/s.Pathy and Pathy (in both the appeals)

For Respondent : Ms.V.Pushpa (in both the appeals)

COMMON JUDGMENT
(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

These Tax Case Appeals by the assessee are filed under Section 260A of the Act against the order of the Income Tax

Appellate Tribunal, 'A' Bench, Chennai, dated 09.08.2004 in ITA Nos. 1260 & 1261/Mds/1995, for the Assessment years 1981-82 & 1982-83 respectively.

2. These appeals were admitted vide order dated 18.04.2011 on the following Substantial Questions of Law:

> "(i) Whether the Income Tax Appellate Tribunal is right in law in replying on a book SM 84 for the purpose of arriving at closing stock, which even according to the Assessing Officer the book is concocted and interpolated?
>
> (ii) Whether the Income Tax Appellate Tribunal is right in law in permitting an addition on presumption and assumption under Section 69B for the assessment year 1981-82 which forms the basis for addition for the assessment year 1982-83 and moreover when it is a search case?
>
> (iii) Whether the Income Tax Appellate Tribunal is right in law in confirming the addition made by the Assessing Officer under Section 69B for the assessment year 1981-82 which forms the basis for addition for the assessment year 1982-83 wherein the Assessing Officer has relied on the stock statement given by the appellant to the bank on 28.02.1981 and 30.04.1981 to conclude that there is difference in the stock given to the Income Tax Department and to the bank as on 31.03.1981?"

3.Heard, Mr.Ashok Pathy, for M/s.Pathy and Pathy, learned counsel for the appellant and M/s.V.Pushpa, learned counsel for the respondent.

4.We have carefully considered the entire materials which were placed before us and have perused the orders passed by the Commissioner of Income Tax (Appeals), CIT(A) and further confirmed by the Tribunal in the impugned order dated 09.08.2004. The contention of the assesee is that the Tribunal ought not to have relied on an undated book which was assessed by the Department, marked as SM 84 for the purpose of arriving at closing stock.

5.Firstly, we may point out that the questions which have been raised by the Assessee are not Substantial Questions of Law but purely the questions of fact. In any event, to consider the correctness of the submission made by the learned counsel for the assessee, we have gone through the order passed by the Tribunal. The Tribunal did not merely go by what was stated in the books assessed by the Authorities, but it took into consideration the statement given by the Bank. The Statement which was furnished by the Assessee Bank was corroborated by the Bank Manager and the Accountant and also physical verification was made by the Field Officers of the Bank.

6.After undertaking such an exercise, the Tribunal pointed out that the case of the assessee was that they use to give 25% inflated stock position to the bank for getting required funds was found to be false.

7.Thus, the Tribunal agreed with the factual finding rendered by the Assessing Officer and as confirmed by the Commissioner of Income Tax (Appeals) and also that SM 84 reflects stock position as on 31.03.1981 and therefore, the authorities have rightly taken up itself as undisclosed income of the assessee. Thus, we find there is no Substantial Question of Law arising of these appeals. Accordingly, the appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrm/kmm

To

1. The Assistant Commissioner of Income Tax,
   Company Circle I (Inv), Chennai.

2. The Commissioner of Income Tax Appeals-V,
   Madras.

3. The Income Tax Appellate Tribunal, 'A' Bench, Chennai.

4. The Section Officer, V.R. Section, High Court, Madras.

+2 cc to mr.M.Swaminathan, Advocate Sr.No.81318,81319

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AK(CO)
CSL/04.01.2019